

**EDMUND G. BROWN JR.**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



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## **NOTICE OF ADVERSE ACTION**

**Name:** William Telish  
**Classification:** Senior Special Agent In Charge  
**Department:** Justice  
Division of Law Enforcement  
Bureau of Narcotic Enforcement  
Riverside Regional Office  
829 Marlborough Avenue  
Riverside, CA 92507

### **I**

## **NATURE OF ACTION**

Pursuant to Government Code section 19590, you are hereby notified that you are dismissed from your position as a Senior Special Agent In Charge with the Department of Justice.

### **II**

## **EFFECTIVE DATE**

This dismissal is effective close of business on July 19, 2010.

00001

[FROM ADMINISTRATIVE RECORD  
SUBMITTED TO SUPERIOR COURT]

AG0000001

III

**STATEMENT OF CAUSES**

This adverse action is being taken against you for the causes specified in the following Subsections of Government Code section 19572:

(d) Inexcusable Neglect of Duty

(f) Dishonesty

(m) Discourteous treatment of the public or other employee

(o) Willful Disobedience

(p) Misuse of state property

(r) Violation of prohibitions set forth in accordance with Government Code Section 19990: (b) Using state time, facilities, equipment, or supplies for private gain or advantage.

(t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.



IV  
**CURRENT ASSIGNMENT AND  
RELEVANT DUTIES AND RESPONSIBILITIES**

On September 14, 1996, you were hired as a Special Agent, a sworn peace officer, with the Los Angeles Bureau of Narcotic Enforcement (BNE) office. During your time in this position you were assigned to the Allied State and Local Team (ASALT) Task Force. Your duties and responsibilities included conducting investigations with other law enforcement agencies; preparing written investigative reports; gathering evidence; using and maintaining investigative and protective equipment; coordinating and testifying in court and grand jury proceedings; filing complaints for prosecution with local district attorneys; making arrests as a result of investigations; and conducting training for peace officers and other special agents. (Exhibit 23.)

On January 1, 2001, you were promoted to Special Agent Supervisor supervising the Violence Suppression Unit (VSU) with the Los Angeles BNE Regional Office. In this position your responsibilities included the same as above, with the addition of supervising Special Agents. As a supervisor your duties included training, planning and assigning work; leadership; effectively understanding and implementing Department policies and procedures including equal employment, progressive discipline, and your role as a supervisor in the Department. (Exhibit 23.)

On February 1, 2005, you were promoted to Special Agent In Charge (SAC) responsible for managing the Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force (L.A. Impact), which is made up of approximately 48 municipal police agencies. LA Impact targets, investigates and prosecutes individuals who organize, direct, finance, or otherwise engage in medium-to-high level drug trafficking enterprises. High priority is placed on those subjects engaged in the importation of drugs and to interdict such illicit supply lines and seize their drugs. As a member of the Department of Justice's management team there is a higher level of expectation in the areas of

supervision, communication, problem solving, and ethics. As the director of LA Impact your responsibilities included managing a multi-faceted task force which employed approximately 90-95 persons from various jurisdictions including other local city and county employees both sworn and nonsworn. While these individuals were not DOJ employees, the non sworn employees were employed as a result of a memorandum of understanding or contract and were required to perform duties directly under your management for LA Impact. (Exhibit 23; Exhibit 1, page 12; Exhibit 19, pages 13-17.)

On July 31, 2009, you were promoted to Senior Special Agent in charge over the BNE Los Angeles Regional Office (LARO) and then transferred to the BNE Riverside Regional Office on November 1, 2009. In this position you are in charge of the overall management of the regional office and its task forces. The Riverside Office is one of BNE's largest regional offices with a span of control of ten or more supervisors and managers throughout the region and multiple task forces. (Exhibit 23; Exhibit 19, page 11.)

V

**STATEMENT OF FACTS, ACTS OR OMISSIONS**

On March 4, 2010, Director George Anderson of the Division of Law Enforcement sent a request to the Employment, Regulation and Administration Section of the Office of the Attorney General to conduct an administrative investigation into allegations of misconduct on your part. This request was a result of a December 2009 complaint made by the Chief of Police of the City of Placentia, that you had allegedly assaulted his employee, Ms. LD , at her home in October of 2009. You were interviewed on April 5, 2010, in Los Angeles, California as part of this investigation.

Ms. LD worked for LA Impact as a contract employee from 1998 through 2008. You were in her line of supervision in your capacity as the Director for LA Impact from 2005 until she left in 2008. Beginning sometime in 2006 you began having a sexual

relationship with Ms. LD You began this affair during a work related conference in 2006. During this time period, you took numerous nude pictures and a video of Ms.

LD , including pictures in the act of sex with you. You would kiss in the office after hours, you had sex in your state issued vehicle and you lied to your supervisor, Jerry Hunter, when specifically asked if you were having an affair with Ms. LD You admitted during your administrative interview that three Deputy Directors at LA Impact asked you about the affair and you denied it. In other words, you lied. Thus, you intentionally tried to conceal from management that there was anything inappropriate going on between the two of you. You accomplished this in part by "chirping" Ms. with the State issued Nextel as a signal for her to contact you. Further, you changed the names and numbers on the telephones in order to not draw attention to the LA Impact phone bills; you would not leave the office together, nor did you ever exchange voicemails, or emails. (Exhibit 1, pages 19-20, 39-41, 49, 52-53, 80-81; Exhibit 19, page 50.)

In 2007 it was reported to LA Impact management that you and Ms. LD were having an affair. Because you were in fear of losing your job you coerced Ms. LD to go directly to the Deputy Director of LA Impact, Rick Law, and state that she had exaggerated the nature of the relationship. She did so. However, it was not until December 2009 that DOJ learned that the reason Ms. LD recanted the story of the affair to Rich Law in 2007 was that you threatened to release the nude pictures that you had of her to her son and others, if she did not do so. In other words, you coerced her to lie. (Exhibit 1, page 24, 80.)

After management became aware of the alleged affair and before Ms. LD left LA Impact in 2008, you discontinued your sexual relationship with her. However, you continued to ask her to email you pictures of her vaginal area so that you could tell if she was seeing other men. You then resumed the affair after she left LA Impact in 2008. (Exhibit 1, pages 53-54; Exhibit 19, pages 23-27.)

This adverse action is being taken against you for the following:

1. In 2007, you used the power of your position at LA Impact to intimidate Ms. telling her to inform Rick Law that she exaggerated the affair; that if she would not do so you would release the sexually explicit photos of her that you had in your possession. (Exhibit 1, pages 24, 80.)
2. On the evening of October 27, 2009, you went to Ms. LD's apartment in Brea claiming that you were on your way to meet with Tony Ybarra, the new Director of LA Impact, at the Brea Mall, and then travel with him to Santa Maria on state business. It was not true that you were planning to meet, nor did you meet with Mr. Ybarra at the mall. In fact, you drove your state car from the LARO to Ms. Drylie's home to have sex with her and then continue on to Santa Maria, in Santa Barbara County where you met with SAC Tony Ybarra the following morning. This drive from the LARO to Brea was out of your way by at least 20 miles each way and constitutes a misuse of your state vehicle in that the trip to Brea in the state vehicle was for your own personal gain.

It was during this visit that you assaulted Ms. LD while trying to review her cell phone messages and call log to determine if she was dating other men. You physically held her down despite Ms. LD's request for you to stop; you told her that she should just give up because you were stronger than she was. During the altercation she ripped your shirt but you did not stop. You held her arm down with one hand and scrolled through the phone with the other. (Exhibit 1, pages 35, 37, 44; Exhibit 8, page 10 (transcription of Feb 23, 2010, telephone call; Exhibit 15, page 24, and Exhibit 19, pages 64, 66; 13-74:21.)

Approximately one month after the incident described above, you contacted Ms. at her place of employment, the Placentia Police Department. Ms. LD was shaken by this phone call because it was not your practice to contact her at work. So, in

December 2009 and after your contact, she reported to her supervisor, Chief James Anderson, both the physical assault and your previous use of the nude photographs to threaten her into recanting any statements she made about the existence of your sexual relationship while the two of you worked at LA Impact.

As a result of Ms. LD 's report to him, Chief James Anderson contacted the Department of Justice and reported these incidents to Deputy Director, Rick Lopes. Shortly thereafter, a criminal investigation into Ms. LD 's allegations was opened and as part of the investigation, Ms. LD began to record telephone conversations between the two of you which revealed the following information. (Exhibit 1, pages 45-46; Exhibit 21, pages 5-10.)

3. On or about January 20, 2010, you referred to the former Deputy Director of LA Impact, Rick Law as a "fucking negro". You referred to Italians as "dirty whiteys" and further made the statement, "White is right." (Exhibit 4, pages 7, 19, 20)
4. On or about January 20, 2010, you asked Ms. LD if a female Placentia PD employee who was a candidate for a BNE taskforce [PACNET] had big titties and if the male candidate had a big cock. (Exhibit 4, page 15-16.)

You asked this question of Ms. LD in her capacity of a Placentia PD employee. Despite the fact that you and Ms. LD had an ongoing personal relationship, such comments made to an employee of an allied agency, someone who reports to the Chief of Police in the midst of placing a peace officer with a DOJ task force, are unacceptable and cause extreme and irreparable discredit to the department. You were assigned as the head of the PACNET task force and have contact and interact with numerous allied agencies and staff in that capacity, all of whom look to you and the DOJ for direction and leadership in their daily jobs. Your thoughtless comments as described in #3 and 4 above have caused great harm to the department and the public service. Chief Anderson from the Placentia PD, when interviewed about this matter on April 12, 2010,

stated "under no circumstances am I going to send [the female candidate] Rubia down there to work...a task force with BNE". The fact that your statements would cause him to have concern about sending a female representative to work on a DOJ task force and cause possible damage to a 30 plus year relationship between Placentia PD and BNE, demonstrates the impact of your behavior and the clear discredit to the department. (Exhibit 21, pages 15-18.)

5. On or about February 23, 2010, during a telephone conversation with Ms. you admitted to the behavior that occurred on October 27, 2009, and admitted to holding her down on the couch but state you were justified in your behavior because Ms. LD had lied to you about whether she was seeing someone else. (Exhibit 8, page 10-12.)

However, during your interview on April 5, 2010, you attempted to underplay the severity of this incident, stating that LD gave the cell phone back to you, then sat with you on the couch and "we actually looked at it together". (Exhibit 19, page 68.) Further you stated that the incident was at first "playful" and then "got mad". But in that interview you denied that you held her down and stated you were trying to get her off you. Thus you were dishonest during your interview. (Exhibit 19, pages 69, 71.)

On March 10, 2010, you were served with a Temporary Restraining Order (TRO) per Ms. LD's request as well as notice that you were under a criminal investigation based on Ms. LD's allegations that she feared that you would release compromising photos of her. Immediately following this, you were served with a Notice of Administrative Time Off (ATO) relieving you of your duties as the Senior SAC for the Riverside Regional Office. During your administrative interview on April 5, 2010, you admitted the following:

6. After receiving notice that you were under investigation and placed on ATO you destroyed all of the compromising pictures of Ms. LD from your personal computer and destroyed the video. (Exhibit 19, page 31, 36) This is an act of dishonesty and is tantamount to suppression of evidence because as a manager and peace officer (narcotics) for over 14 years you are fully aware of what the photos could and might have been used for in any action or investigation against you. The photos were mentioned in the TRO paperwork, which you received at the time you were placed on ATO. Because you are fully aware of evidentiary issues related to preservation of evidence in criminal matters and as a supervisor charged with knowledge of upholding all of DOJ's policies, your explanation that you destroyed the photos and video because you were "angry" is dishonest. Your dishonesty is further confirmed because in your interview, when asked why you destroyed these photos and video, you stated that "at some point" you knew you would be asked about them and did not want the photos "under [your] control at that point." Thus, you intentionally destroyed the photos and video knowing they could be needed for evidence. (Exhibit 19, page 99.)
7. During your recorded conversation of January 4, 2010, you bragged to Ms. that you had a "confidential informant" (CI) who worked in the Director's Office at Sacramento who would let you know if there was ever an internal investigation opened on you and that you stuck your cock down her (the informant's) 70-year old throat "now and again", giving the impression that a DOJ employee provided confidential information in exchange for sexual favors. (Exhibit 2, transcript of telephone conversation January 4, 2010, page 12-13.) During your interview you admitted this tale of the CI was fabricated for the purpose of keeping Ms. LD quiet. (Exhibit 19, page 77-80.) Such a story, which you admit is fabricated, still casts the department in a negative light. Providing false and inflammatory information to an employee of an allied police agency causes further discredit to this department.

8. During your interview on April 5, 2010, when asked if you had ever made a reference to a Placentia female employee's breast size or a male employee's penis size when talking to Ms. LD you stated you could not recall. (Exhibit 19, page 86.) However, during your telephone conversation on January 20, 2010, you asked Ms. LD if [REDACTED], had big titties and then asked if [REDACTED], the male employee, had a big cock. (Exhibit 4, page 15.) It is not credible that you failed to remember such a conversation considering you intentionally brought up the subject of the Placentia PD joining the PACNET task force with Ms. [REDACTED] during this conversation. Thus you were dishonest in your interview.
9. You were dishonest when you stated in your interview that sometime in January/February 2010, you contacted Chief James Anderson regarding the placement of one of the above employees on the PACNET task force and left a message for him but that Chief Anderson never called you back, when in fact, you have never contacted him at all. Further, during this same period of time, you were dishonest with your supervisor, Jerry Hunter, when he instructed you two or three times to contact the Placentia Chief of Police for the same reason and you told him that you had and that the chief had not called you back. As stated above, you have never contacted Chief Anderson about this issue. (Exhibit 14, page 68; Exhibit 19, page 84; Exhibit 21, pages 20, 26.)

As a senior level manager for the Department of Justice you are fully aware of your role as a manager and the level of expectation regarding interaction with staff and others in the course of your position as a representative of the Attorney General's Office. Your behavior and interaction with subordinate employees is disgraceful, contumacious and brings discredit to the organization. Despite the fact that you manage large groups of diverse employees and oversaw multiple task forces and received training during your time at DOJ, your actions demonstrate that you have no regard for the Department's policies and procedures concerning sexual harassment and equal rights under the law. As a peace officer, you are held to the highest standard and are relied upon to serve and



protect the public. The events above demonstrate that you have been, among other things, dishonest and disrespectful and your credibility has been brought into question and will be in the future. For these reasons the Department of Justice is dismissing you from your position as a Senior SAC and from State employment.

## VI

### PRIOR NOTICE AND PROGRESSIVE DISCIPLINE

Upon initial hire with DLE, all employees are given the DLE Policy and Procedure Manual. This manual establishes policies and procedures and regulations for all DLE employees. Each employee is given an acknowledgement to sign which indicates they have read, understood, and agreed to the policies and procedures set forth in the manual. On February 19, 1998, you signed the Acknowledgement of DLE Policy and Procedure Manual. Therefore, your signature indicated that you were aware of the DLE policies and procedures and agreed to adhere to the policies while employed with DLE.

On November 29, 2007 and again on September 15, 2009, you received training on Discrimination, Harassment, and Retaliation Prevention Training. As part of these acknowledgements, you also received copies of the Department's policies on Discrimination, Harassment, and Retaliation Complaint Procedures, Non-discrimination Policy, Anti Retaliation Policy, Sexual Harassment in the Workplace, Nepotism Policy, Equal Employment Opportunity Policy and Workplace Violence Prevention Program.

**VII**  
**MATERIALS AND DOCUMENTS**

Pursuant to State Personnel Board Rule 52.3, copies of all materials and documents upon which this Adverse Action is based accompany this Action with a cover sheet denoting each material/document.

Additionally, pursuant to Government Code section 19574.1, you or your designated representative, have the right to inspect any documents in the possession of, or under the control of, this Department which are relevant to this Action or which would constitute "relevant evidence" as defined by Evidence Code section 210. If you have a request pursuant to Government Code section 19574.1, you should contact Susan Jimenez at (916) 322-0013.

**VIII**  
**RIGHT TO RESPOND TO APPOINTING POWER**

Pursuant to Government Code section 19590, you have the right to respond to this Notice of Adverse Action, either in writing or verbally, **prior to the close of business on July 14, 2010**. If you wish to respond verbally, please contact Mark Geiger at (916) 263-2533 to schedule your meeting to ensure it can be held **prior to the close of business on July 14, 2010**. You have the right to a representative at this meeting; however, at this stage of the proceedings you are not entitled to a formal hearing with examination of witnesses. You are entitled to a reasonable amount of State time to prepare your response to the charges/allegations. If you wish to respond in writing, please submit your request to Mark Geiger, Bureau of Medical Fraud, 1425 River Park Drive, Suite #300, Sacramento 95815.

Your written response should be mailed or hand-delivered to ensure receipt in time for consideration **prior to the close of business on July 14, 2010**. If you choose to verbally respond, the individual meeting with you will be representing the appointing power and shall have the authority to amend, modify or revoke any or all of the foregoing allegations, including the Action in its entirety. A written response by you shall be considered by an individual with the same authority.

## IX

### RIGHT TO APPEAL TO THE STATE PERSONNEL BOARD

Regardless of whether you choose to respond as detailed in Section VIII above, pursuant to Government Code section 19590, you may appeal this Action to the State Personnel Board. Such an appeal must be filed in writing no later than thirty (30) calendar days after receipt of this action. This appeal should be sent to:  
State Personnel Board, Attn: Appeals Division, 801 Capitol Mall, Sacramento, CA 95814. You may also file your appeal in person with the State Personnel Board which is located at 801 Capitol Mall in Sacramento, California; business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday and closed holidays as well as furloughed Fridays.


Your appeal shall be deemed to be a request for hearing or investigation as provided in Section 19590 of the Government Code. If you fail to file an appeal within the time specified or withdraw your appeal, this Action shall be final. The State Personnel Board, or its authorized representative, may hold a hearing on your appeal of this action. If a hearing is scheduled, you will be notified of the time and place of the hearing. **You are responsible for notifying the State Personnel Board of any changes in your address that occur after the effective date of this action.**

X

**SEPARATE AND DISTINCT RIGHTS**

Your right to respond prior to the effective date of this Action, as detailed in paragraph VIII above, is separate and distinct from your formal State Personnel Board appeal rights as detailed in paragraph IX above. You may exercise both rights as long as you do so within the time limits provided.

DATED: 2/23/10

  
\_\_\_\_\_  
DON HAYASHIDA, Deputy Director  
Division of Administrative Support

William Telish  
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cc: State Personnel Board  
Hearing Officers' Section  
801 Capitol Mall, Room 264  
Sacramento, California 95814

Skelly Officer

George Anderson, Director  
Division of Law Enforcement  
1102 Q Street, 6<sup>th</sup> Floor  
Sacramento, California 95811-6548

Alicia Fowler, Special Assistant Attorney General  
Division of Civil Law  
Employment, Regulation and Administration  
1300 I Street  
Sacramento, California 95814

Professional Standards Group

Personnel Office

Personnel Transactions Supervisor

**MATERIALS AND DOCUMENTS ACCOMPANYING  
THE NOTICE OF ADVERSE ACTION**

To: William Telish

I have compiled the following copies of the materials/documents upon which the Notice of Adverse Action is based. The materials/documents are not set forth in any particular order and no conclusions should be drawn by their order or the numbers they have been assigned on this list. Please be advised that if any of the listed materials/documents below were "exhibits" to an/the Investigation Report, they do not necessarily have the same designation below that they had as "exhibits."

Notice of Adverse Action for Sr. SAC William Telish (12 pp)

DLE Executive Review Transmittal (1 p)

1. Investigation Report by Barbara Siedman, SDAG and Alicia Fowler, SAAG (38 pp)
2. Exhibits
  - 1) Transcript of LD Interview on December 19, 2009
  - 2) January 4, 2010, recorded telephone conversation between And Telish transcript
  - 3) LD polygraph report
  - 4) January 20, 2010, recorded telephone conversation between And Telish transcript
  - 5) January 27, 2010, recorded telephone conversation between And Telish transcript
  - 6) February 8, 2010, recorded telephone conversation between And Telish transcript
  - 7) February 9, 2010, recorded telephone conversation between And Telish transcript
  - 8) February 23, 2010, recorded telephone conversation between And Telish transcript

- 9) Investigation Report, Investigation Number HQ 10-0007
- 10) Supplemental Investigation Report, Investigation Number HQ 10-0007
- 11) Notice of Administrative Time Off served on William Telish, March 10, 2010
- 12) Director George Andersons' Request for Investigation
- 13) Notification letter to William Telish, March 17, 2010
- 14) Certified transcript of [REDACTED] March 29, 2010 interview.
- 15) Certified transcript of [REDACTED] march 29, 2010 interview.
- 16) Copy of William Telish Travel Claim dated November 1, 2009
- 17) Certified transcript of [REDACTED] March 29, 2010 interview.
- 18) Copy of email sent to investigators by [REDACTED]
- 19) Certified transcript of William Telish's April 5, 2010 interview.
- 20) Certified transcript of [REDACTED] April 5, 2010 interview.
- 21) Certified transcript of [REDACTED] April 12, 2010 interview.
- 22) Receipt of Incompatible Activities Policy dated July 1996. Receipt of DOJ Manual dated February 19, 1998. Acknowledgement of Receipt of EEO Policies and Workplace Violence Prevention dated November 29, 2007. Certification for Managers and Supervisors completion of Discrimination, Harassment, and Retaliation Prevention Training dated September 15, 2009 (4 pp)
- 23) Class Specification for Special Agent series. Current Duty Statement, as Sr. Special Agent in Charge.

I, James Hirt, declare:  
Print Name of Person Serving Document

I am, and was at the time of the service of the attached document(s), over the age of 18 years and not a party to the proceedings involved.

On 29 Jun 14, 2010, I served the attached:  
Date

- ☐ Notice of Absence Without Leave (Original)
- ☒ Notice of Adverse Action (Original)
- ☐ Notice of Paid Administrative Leave (Original)
- ☐ Notice of Rejection During Probation (Original)
- ☒ The materials/documents upon which the notice is based and Declaration of Service (Copy)
- ☐ Other: \_\_\_\_\_

Address of party served:

Employee Name: William Telish

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

- ☒ By Personal Service, by personally delivering to and leaving with the employee a copy at the address set forth above.
- ☐ By Service by Mail, by placing a true copy in a sealed envelope addressed to the last known address of the employee set forth above, and depositing the envelope in the United States Mail, at \_\_\_\_\_, California.
- ☐ By Service by Mail, by placing a true copy in a sealed envelope addressed to the last known address of the employee set forth above, and depositing the envelope in the United States Mail registered or certified with return receipt requested and postage thereon fully paid at \_\_\_\_\_, California.

I declare under penalty of perjury, under the Laws of the State of California that the foregoing is true and correct. Executed on:

06-29-10 at ALISO VIEJO, California 92656  
Date City Zip Code

  
Signature of Person Serving Document



s8514-24SpclAgntDOJ  
SPEC: SPECIAL AGENT, DEPARTMENT OF JUSTICE, SERIES  
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

SPECIAL AGENT, DEPARTMENT OF JUSTICE  
Series Specification  
(Established April 6, 1972)

SCOPE

This series specification describes five Special Agent classes used by the Department of Justice. Incumbents in these classes conduct, supervise, or manage complex and sensitive civil, criminal, and narcotic investigations and enforcement activities. Special Agents, Department of Justice, may be assigned to provide technical assistance and training to other law enforcement officers and may serve in special assignments for the Department. Special Agents of the Department of Justice perform the full range of peace officer duties and responsibilities in accomplishing their assignments.

Schem Code	Class Code	Class
VG15	8514	Special Agent Trainee, Department of Justice
VG25	8482	Special Agent, Department of Justice
VG45	8524	Special Agent Supervisor, Department of Justice
VG50	8523	Special Agent-In-Charge, Department of Justice
VG55	8522	Senior Special Agent-In-Charge, Department of Justice

DEFINITION OF SERIES

Special Agents, Department of Justice, conduct complex civil and criminal investigations involving the illegal manufacture, distribution, sales, diversion, possession, and use of controlled substances; conduct investigations of cases involving organized criminal activity including, but not limited to, sexual predators, violent repeat offenders, terrorists, and users of illegal weapons; plan, coordinate, and participate in enforcement actions involving multiple felony suspects; work undercover as well as participate in covert stationary, mobile, and aerial surveillances; conduct complex investigations of antitrust violations, Medi-Cal (Medicaid) and Federal health care program provider fraud, money laundering, asset forfeiture, physical and financial abuse, neglect, and sexual assault of elders, dependant adults, and patients, and consumer and investment frauds; assist other law enforcement agencies to conduct complex investigations; plan, direct, and coordinate enforcement activities with other law enforcement agencies; interrogate and interview suspects and witnesses; make arrests; confer with and/or assist prosecutors in preparing cases for court; serve search warrants to seize evidence of criminal activity; investigate conspiracies in restraint of trade, monopolistic, and unfair trade practices by business organizations; investigate the diversion by doctors, pharmacists, nurses, or other medical practitioners or medical providers of controlled substances to illicit use of legally manufactured controlled substances that relates to a Medical/Medicaid provider; appear as witnesses; advise and consult with Federal, State, and local law enforcement agencies concerned with the

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criminal, public health, and educational aspects of the suppression of illegal narcotic traffic; plan and coordinate narcotic enforcement activities involving State, Federal, county, and local law enforcement personnel; make arrests of law violators; gather intelligence data; investigate allegations of illegal activity or irregularities by State or local officials; provide training and technical assistance in the latest techniques of enforcement and investigation to State and local law enforcement agencies; serve in special assignments including, but not limited to, aircraft pilot, Foreign Prosecution, Criminal Investigative Profiler, drug task force supervisor, or legislative advocate for the Department; conduct inspections of Department regional office operations and internal affairs investigations and recommend any necessary actions; make public presentations; and provide protective services to public officials.

#### DEFINITION OF LEVELS

##### SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE

This class is used for the recruitment and development of individuals with a four-year college degree who do not possess investigative law enforcement experience. Incumbents will receive comprehensive, on-the-job training in the application of the principles and techniques of conducting civil, criminal, or narcotic investigations and enforcement activities for the Department of Justice.

Special Agent Trainees, Department of Justice, must successfully complete all academy courses, including academic classes, physical training, physical methods of arrest, vehicle operation, and use of weapons in order to be eligible to qualify to move to the class of Special Agent, Department of Justice. Failure in the Special Agent Trainee, Department of Justice, class to qualify for movement to the class of Special Agent, Department of Justice, within the prescribed training period will be cause for termination.

##### SPECIAL AGENT, DEPARTMENT OF JUSTICE

Incumbents in this class conduct civil, criminal, or narcotic investigation and enforcement activities for the Department of Justice. Incumbents are assigned to a team and may work independently or as a leadperson coordinating the work of other law enforcement personnel. Incumbents may be assigned to provide training and technical assistance to law enforcement personnel.

##### SPECIAL AGENT SUPERVISOR, DEPARTMENT OF JUSTICE

Incumbents in this class function (1) as a working supervisor directing a team of three or more agents or other law enforcement personnel; or (2) as the highest journey level agent assigned the most difficult and complex cases with broad discretion and independence of action; or (3) in a staff assignment, to coordinate the efforts of 5-10 individuals assigned to a specialized statewide law enforcement program outside normal investigation operations. Incumbents can work closely with other law enforcement agencies to coordinate respective investigative efforts. Incumbents may provide high-level technical assistance and training in investigation and enforcement activities.

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SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE

Incumbents in this class function as either (1) the manager responsible for planning, organizing, and directing the law enforcement programs in a designated geographical area of the State or a statewide enforcement program; or (2) the manager of multiple specialized, investigative, enforcement, or training programs or projects in the Department of Justice.

SENIOR SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE

This is the full managerial and supervisory level responsible for planning, organizing, and directing one of the Division of Law Enforcement's largest and most complex investigation programs in an assigned area of the State. The area of responsibility is to be sufficiently large and complex as to require subordinate managers. These positions will be distinguished from Special Agents-in-Charge, Department of Justice, based upon span of control, level and classification of subordinates, program complexity, and responsibility.

Positions at this level are to be characterized by the following criteria:

1. Manages/supervises one of the largest Division of Law Enforcement's investigation programs in an assigned area of the State, with a span of control of at least seven managers/supervisors with operational responsibility. and
2. Staffing for which the position is either directly or indirectly responsible for at least 100 law enforcement personnel. and
3. The regional office is responsible for 12 or more different operational programs.

MINIMUM QUALIFICATIONS

SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE

Education: Equivalent to graduation from college. (Registration as a senior student in a recognized institution will admit applicants to the examination, but they must produce evidence of successful completion of the curriculum and the prescribed courses before they may be considered eligible for appointment.)

SPECIAL AGENT, DEPARTMENT OF JUSTICE

Either I

duties of One year of experience in the California state service performing the the class of Special Agent Trainee, Department of Justice. (Applicants who have completed six months performing the duties of a Special Agent Trainee, Department of Justice, will be admitted to the examination, but they must satisfactorily complete one year of experience in the class of Special Agent Trainee, Department of Justice, before they will be considered eligible for appointment.)

Or II

Experience: Two years of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an

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investigative assignment performing civil, criminal, or narcotics law enforcement work. (Patrol experience may be substituted for the required investigative experience on the basis of one year of patrol experience being equivalent to six months of investigative experience.) and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

Or III

Experience: One year of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotics law enforcement work. (Patrol experience may be substituted for the required investigative experience on the basis of one year of patrol experience being equivalent to six months of investigative experience.) and

Education: Equivalent to graduation from college.

#### SPECIAL AGENT SUPERVISOR, DEPARTMENT OF JUSTICE

Either I

Two years of experience in the California state service performing duties of the class of Special Agent, Department of Justice, Range C.

Or II

Three years of experience in the California state service performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent, Department of Justice, Range C. and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

Or III

Experience: Five years of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotic law enforcement work, including or supplemented by one year of supervisory experience. (Experience in the California state service applied toward this requirement must include at least three years performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent, Department of Justice, Range C.) and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

Or IV

Experience: Four years of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotics law enforcement work, including or supplemented by one year of supervisory experience. (Experience in the California state service applied toward this requirement must include at least three years performing investigative duties of a class with a level of

Page 4

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responsibility equivalent to that of a Special Agent, Department of Justice, Range C.) and

Education: Equivalent to graduation from college.

Promotional candidates who are within six months of satisfying the experience requirement for this class will be admitted to the examination, but they must fully meet the experience requirement before they will be considered eligible for appointment.

**SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE**

**Either I**

One year of experience in the California state service performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent Supervisor, Department of Justice.

**Or II**

Experience: Five years of increasingly responsible experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotic law enforcement work, at least two years of which must have been in a supervisory capacity. (Experience in the California state service applied toward this requirement must include at least one year performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent Supervisor, Department of Justice.) and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

**SENIOR SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE**

**Either I**

One year of experience in the California state service performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent-in-Charge, Department of Justice.

**Or II**

Three years of experience in the California state service performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent Supervisor, Department of Justice.

**Or III**

Experience: Five or more years of increasingly responsible experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotic law enforcement work, at least two years of which must have been in a supervisory capacity. (Experience in the California state service applied toward this requirement must include at least one year performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent Supervisor, Department of Justice.) and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

basis.)

#### KNOWLEDGE AND ABILITIES

##### SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE

Knowledge of: Civil, criminal, and narcotic investigation techniques; provisions of the California Penal Code, the Evidence Code, the Code of Civil Procedures, the State Controlled Substances Act, the Welfare and Institutions Code, Business and Professions Code, Health and Safety Code, Title XXII of the California Code of Regulations, Code of Federal Regulations, the Federal Social Security Act, and other State and Federal laws relating to controlled substances and relating to crimes committed against the Medi-Cal Program and aged, disabled, and dependant adults; individual's constitutional rights including those relating to laws of arrest, search and seizure, and the service of legal process.

Ability to: Develop techniques, methods, and skills and apply applicable laws required to conduct civil, criminal, and narcotic investigations; operate a vehicle safely and effectively; use, maintain, and qualify with approved firearms; communicate effectively; prepare and present well organized, accurate, and timely written reports; establish and maintain cooperative working relationships; gain and maintain First Aid and CPR certification.

##### SPECIAL AGENT, DEPARTMENT OF JUSTICE

Knowledge of: All of the above, and major investigative operational plans; interview, interrogation, information, and intelligence gathering processes and procedures; proper tactics and use of force in affecting arrests of suspects, felony car stops, and entry in fortified buildings; proper techniques to plan and coordinate multisuspect/multidwelling enforcement actions; sophisticated investigative techniques including use of wiretaps, pin registers, traps, tracking devices, subpoenas, and complex search warrants; peace officer training techniques and methods; applicable Department policies and procedures; the interrelationship of other law enforcement agencies with the Department of Justice; techniques for securing, preserving, and handling evidence; techniques used to prevent diversion of licit drugs to illicit channels; undercover operations using paid and unpaid operators; use of relational database software to analyze and evaluate fiscal data from various sources and to analyze seized computerized data; the role and availability of forensic support services in the investigative process; contemporary computer technology and communications systems used in the investigative process; use of computers to prepare search warrants, affidavits, and reports in field locations; use of computers to maintain administrative time reports, reports of investigation, and case and file management systems.

Ability to: All of the above, and identify controlled substances; gather, analyze, and present facts and evidence; utilize various software programs to analyze computerized data from various State and Federal fiscal intermediaries and identify patterns of fraud; analyze situations accurately and take effective action; work undercover; participate actively in covert moving, stationary, and aerial surveillances, investigations, and interviews; file complaints and serve legal documents; conduct and coordinate multiagency and/or complex investigations as a lead agent; plan and coordinate raid and operational actions as a case agent; coordinate with prosecutorial

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agencies and the court in the prosecution of suspects as the trial agent; photograph crime scenes; use and maintain communications and investigative equipment; appear as an expert witness; prepare and present well-organized, accurate court testimony; use proper techniques during tactical operations; provide technical assistance to and conduct training for other allied and public agencies and law enforcement personnel; develop and maintain sources of information.

#### **SPECIAL AGENT SUPERVISOR, DEPARTMENT OF JUSTICE**

Knowledge of: All of the above, and principles and techniques of supervision; advanced peace officer training techniques and methods; applicable collective bargaining memorandum of understanding and related issues; State, Department, and Bureau policies and procedures; disciplinary guidelines and personnel rules; a manager's/supervisor's responsibility for promoting equal opportunity in hiring and employee development and promotion, and for maintaining a work environment that is free of discrimination and harassment.

Ability to: All of the above, and plan, direct, and conduct the most difficult and complex civil, criminal, and narcotic investigations; plan for and allocate resources to achieve program goals and objectives; effectively supervise the work of a group of Special Agents, Department of Justice, other law enforcement personnel, investigative auditor, and support staff; review and monitor cases for efficient and effective progress; effectively coordinate the preparation and presentation of the prosecution of fraud and patient abuse cases with the assigned Deputy Attorney General; initiate and review personnel matters; effectively promote equal opportunity employment and maintain a work environment that is free of discrimination and harassment.

#### **SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE**

Knowledge of: All of the above, and techniques and methods for managing specialized investigative and enforcement programs and implementing intelligence exchange with multijurisdictional agencies; training programs for other law enforcement agencies; organization and functions of the Department of Justice; goals and objectives of the Department and the Bureau; roles, relationships, and responsibilities of other law enforcement agencies and other governmental agencies.

Ability to: All of the above, and plan, organize, and direct the investigation and enforcement programs in designated geographical areas of the State; develop and maintain administrative and operational quality control measures; manage nonsworn personnel in carrying out the functions of the program; implement, develop, and evaluate training programs; manage specialized investigative and enforcement programs or projects.

#### **SENIOR SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE**

Knowledge of: All of the above.

Ability to: All of the above, and plan, organize, and direct a large number of investigative programs and personnel in an assigned area of the State; effectively direct and supervise the activities of managerial staff.

**SPECIAL PERSONAL CHARACTERISTICS**

**ALL LEVELS:**

No illegal involvement in controlled substances as an adult; willingness to work throughout the State and at unusual hours; ability to work under stress and adverse conditions; keenness of observation; good memory for names, faces, places, and incidents; willingness to associate with criminally inclined persons and environments in performance of duties; willingness to work undercover and participate in covert moving, stationary, and aerial surveillances; willingness to utilize a variety of weaponry, including shotguns, machine guns, tear gas, and distractionary devices; willingness to pursue violent repeat offenders and effect their arrest; willingness to operate a police vehicle under emergency circumstances; willingness to deal with toxic materials and chemicals; willingness to handle gruesome crime scenes involving persons of all ages; satisfactory record as a law-abiding citizen; maintain good credit; possession of a valid driver license; willingness to use all appropriate means, including deadly force, to carry out peace officer duties; exercise good judgment; and demonstrate good work habits.

**SPECIAL PHYSICAL CHARACTERISTICS**

**ALL LEVELS:**

Good health, sound physical condition, freedom from any physical, mental, or emotional condition or limitation that would interfere with the full performance of the essential duties of positions in these classes; effective use of both hands; strength, endurance, and agility; normal hearing; vision sufficient to perform the essential functions of the class; and weight proportionate to height.

**ADDITIONAL DESIRABLE CHARACTERISTICS**

**ALL LEVELS:**

In addition to the above knowledge and abilities, possession of the appropriate certificates as evidence of increased competency at each level is desirable. Also desirable is evidence of completed course work in the following subject areas: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, and philosophy of law.

**AGE LIMITATION**

**SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE**

Minimum age for appointment is 18 years of age.

**PEACE OFFICER STANDARDS**

**ALL LEVELS:**

**Felony Disqualification:** Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under welfare and Institutions

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Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division 2.5, Chapter 1, Article 4, Section 1772(b). Except as provided for by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classes.

**Firearm Conviction Disqualification:** Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications.

**Citizenship Requirement:** Pursuant to Government Code Section 1031(a), in order to be a peace officer, a person must be either a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U.S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied.

**Background Investigation:** Pursuant to Government Code Section 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment. Persons who have previously undergone a Department of Justice background investigation may be required to undergo an additional background investigation.

**Training Requirements:** Under provisions of Penal Code Section 832, successful completion of a training course in laws of arrest, search and seizure, and in firearms and chemical agents is a requirement for permanent status in these classifications.

**Medical Requirement:** Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively.

**Drug Testing Requirement:** Applicants for positions in these classes are required to pass a drug-screening test. (The drug-screening test will be waived for employees who are currently in a designated "sensitive" class for which drug testing is required under State Personnel Board Rule 213.)

CLASS HISTORY

Class	Date Established	Date Revised	Title Changed
Special Agent Trainee, Department of Justice	10/1/95	10/20/98	--
Special Agent, Department of Justice	8/31/82	10/20/98	--
Special Agent Supervisor, Department of Justice	4/6/72	10/20/98	6/28/88
Special Agent-In-Charge, Department of Justice	4/6/72	10/20/98	6/28/88
Senior Special Agent-in-Charge, Department of Justice	4/13/90	10/20/98	--

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SEPTEMBER 1992 - OCTOBER

NOVEMBER 1992 - DECEMBER

10-8353 ✓

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WORKERS COMPENSATION  
OF COUNSEL  
STEVEN E. KAYE

July 7, 2010

SENT ON JULY 7, 2010 VIA FAX TO (916) 654-6055  
ORIGINAL SENT VIA FIRST CLASS MAIL

CALIFORNIA STATE PERSONNEL BOARD  
Appeals Unit  
801 Capitol Mall  
Sacramento, CA 95814

Re: WILLIAM TELISH, SENIOR SPECIAL AGENT IN CHARGE, DEPARTMENT  
OF JUSTICE, BUREAU OF NARCOTICS ENFORCEMENT

Dear Honorable Members of the Board:

Please be advised that this office represents Mr. Telish, who, by this letter, appeals the proposed notice of termination he received on June 29, 2010. Mr. Telish hereby denies any and all charges in the notice and requests a hearing before the Board to challenge the charges and penalty.

Please contact me directly regarding any arrangements for the hearing. Thank you for your attention to this matter.

Yours cordially,

SILVER, HADDEN, SILVER, WEXLER &amp; LEVINE

  
WILLIAM J. HADDEN

WJH:clm  
01671-lr.wpd



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P.O. BOX 2161  
SANTA MONICA, CA 90407-2161

WORKERS' COMPENSATION  
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STEVEN E. KAYE

TELEPHONE: (310) 393-1486  
TELEPHONE: (310) 870-0900  
FACSIMILE: (310) 395-3801  
WEBSITE: shslaborlaw.com

DATE: July 7, 2010 FAX NO: (916) 654-6055

TO: Appeals Unit

OF: California State Personnel Board

FROM: William J. Hadden, Esq.

DOCUMENT TRANSMITTED: Letter re William Telish: Appeal from Notice of Proposed Termination

NUMBER OF PAGES: 2 (including this cover sheet)

COMMENTS: \_\_\_\_\_

SHOULD ANY PROBLEM OCCUR DURING TRANSMISSION, PLEASE CALL (310) 393-1486.

CLIENT: TELISH BILLING NO: 2668-1

☐ Original will not follow.

☒ Original will follow by:

☒ First Class Mail

☐ Certified Mail, Return Receipt Requested

☐ Federal Express

☐ Other (specify) \_\_\_\_\_

TRANSMITTED BY: Cheryl

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10-3359

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WORKER'S COMPENSATION  
OF COUNSEL  
STEVEN E. KAYE

July 7, 2010

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**ORIGINAL SENT VIA FIRST CLASS MAIL**

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Appeals Unit  
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Sacramento, CA 95814

Re: WILLIAM TELISH, SENIOR SPECIAL AGENT IN CHARGE, DEPARTMENT  
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Dear Honorable Members of the Board:

Please be advised that this office represents Mr. Telish, who, by this letter, appeals the proposed notice of termination he received on June 29, 2010. Mr. Telish hereby denies any and all charges in the notice and requests a hearing before the Board to challenge the charges and penalty.

Please contact me directly regarding any arrangements for the hearing. Thank you for your attention to this matter.

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WILLIAM J. HADDEN

WJH:clm  
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PEALS DIVISION

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[FROM ADMINSTRATIVE RECORD  
SUBMITTED TO SUPERIOR COURT]

AG0000031



801 Capitol Mall Sacramento, CA 95814 | 866-844-8671 | www.spb.ca.gov

Governor Edmund G. Brown Jr.

**WILLIAM TELISH  
v.  
CALIFORNIA DEPARTMENT OF  
JUSTICE**

**Appeal from Dismissal**

**Case No. 10-3353  
RESOLUTION**

**WHEREAS**, the State Personnel Board has considered carefully the Proposed Decision filed by the Administrative Law Judge (ALJ) in the matter of the appeal by Appellant, William Telish, Case No. 10-3353, from Dismissal, with California Department of Justice (Respondent); and

**IT IS RESOLVED AND ORDERED THAT:**

1. The attached Proposed Decision of the Administrative Law Judge is **REJECTED**;
2. The Board will decide the case itself and the matter shall be set for written and/or oral argument before the Board;
3. The parties' right to argue other matters is not limited. However, the Board invites particular discussion on the following issues:
  - (a) Is the surreptitious recording of Appellant's conversation with Ms. [redacted] admissible under Penal Code, section 632 et al.?
  - (b) If the recording is inadmissible, what is the proven misconduct based on the admissible evidence and the appropriate penalty for the proven misconduct?
4. The Board will decide the case upon the record, including the transcript;

5. The parties will be notified of the procedures for ordering transcripts and submission of written argument as well as the procedure for requesting oral argument.

\* \* \* \* \*

The foregoing Resolution was made and adopted by the State Personnel Board in Case No. 10-3353 during its meeting of September 6, 2011, as reflected in the record of the meeting and Board minutes.

Dated: September 8, 2011

/s/SUZANNE M. AMBROSE  
SUZANNE M. AMBROSE  
Executive Officer

WILLIAM TELISH  
v.  
CALIFORNIA DEPARTMENT OF JUSTICE  
  
Appeal from Dismissal

Case No. 10-3353  
  
Proposed Decision

---

**STATEMENT OF THE CASE**

This matter came on regularly for hearing before Mary L. Cote, Administrative Law Judge (ALJ), State Personnel Board (SPB), on February 28, and March 1 - 4, 2011, in Los Angeles, California. The case was submitted upon receipt of closing written arguments on April 27, 2011.

Appellant, William Telish, was present and represented by Christy L. O'Donnell, Esquire, and Brianne R. Gardner, Esquire, McCune & Harber, LLP.

Respondent, California Department of Justice (Respondent or DOJ), was represented by Chris A. Knudsen, Supervising Deputy Attorney General (DAG), and Christine Mertsen, DAG, Office of the Attorney General, DOJ.

Certified shorthand report, Deanna L. Haaker, Norman Schall & Associates, was present at the request of Appellant, on February 28, 2011. Waukeen McCoy, Esquire, representing witness LD was present during her testimony.

Respondent dismissed Appellant, a Senior Special Agent in Charge, effective close of business on July 19, 2010. Respondent alleges that Appellant intimidated, threatened to release sexually explicit photographs of, and physically assaulted a subordinate employee with whom he had a consensual relationship. Respondent also alleges that Appellant misused his State issued vehicle. Respondent further alleges



that Appellant made derogatory racial comments about a supervisor, discussed the physical attributes of candidates for a position on a task force, falsely claimed to have an informant who provided him with confidential information, was dishonest during his investigatory interview; and destroyed evidence.

Appellant denies the allegations. Appellant also asserts that the investigation was incomplete and politically motivated, and his private conversations were protected by the First Amendment of the United States Constitution

### **PROCEDURAL MATTERS**

#### **Appellant's Motion to Continue the Hearing**

At the commencement of the hearing on February 28, 2011, Appellant made a motion to continue the hearing because he recently retained a new attorney, O'Donnell, who intended to file a Whistleblower Retaliation Complaint and various motions. On February 22, 2011, when Appellant formally substituted his legal representation to O'Donnell, he was aware of the impending hearing dates and did not request a continuance. Also, O'Donnell participated in the Prehearing Conference on December 10, 2010, as Appellant's counsel in related civil matters against the State, and was familiar with the case. The motion to continue was denied for lack of good cause.

#### **Appellant's Motion to Strike**

Appellant moved to strike the following: Section V of the NOAA, charges related to telephonic conversations with LD , and allegations falling outside of the one year statute of limitations. Respondent objected to the motion as untimely.

California Code of Regulations, Title 2, section 60.1, subdivision (a), provides that a motion to strike "shall be filed with the Appeals Division no later than 90 days

from the date the appeal or complaint was filed with the SPB." This regulation went into effect on August 18, 2010. Thus, any motion to strike was to be filed no later than November 17, 2010. Appellant failed to file his motion before November 17, 2010. Appellant's motion to strike is untimely, and, therefore, denied. Even if Appellant established good cause for failing to meet the filing requirements, the motion to strike is denied for the following reasons:

**Section V of the NOAA**

The first four paragraphs of Section V provide minimal background information and the remaining paragraphs specify the alleged activities for which the NOAA was taken. There is no legal basis to strike Section V.

**One Year Statute of Limitations**

Government Code section 3304, subdivision (d)(1), states in pertinent part:

Except as provided in this subdivision and subdivision (g), no punitive action . . . shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. . . . In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year . . .

In *R.B. (2008) SPB Dec. No. 08-02*, the Board clarified the definition of "a person authorized to initiate an investigation into peace officer misconduct" pursuant to Section 3304, subdivision (d), as follows:

Absent any specific identification or authorization by the appointing power, the 'person authorized to initiate an investigation' must be at a supervisory level or higher, have been a witness to or otherwise have knowledge of the underlying alleged misconduct, and not have participated in the underlying alleged misconduct.

WILLIAM TELISH  
v.  
CALIFORNIA DEPARTMENT OF JUSTICE  
  
Appeal from Dismissal

Case No. 10-3353  
  
Proposed Decision

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Absent any specific identification or authorization by the appointing power, the 'person authorized to initiate an investigation' must be at a supervisory level or higher, have been a witness to or otherwise have knowledge of the underlying alleged misconduct, and not have participated in the underlying alleged misconduct.

"The date upon which an administrative agency discovers misconduct is a question of fact, as is the reasonable diligence with which the person authorized to initiate an investigation into misconduct acted." (*Haney v. City of Los Angeles* (2003) 109 Cal.App.4th 1, 8.)

The NOAA was served on Appellant on June 23, 2010. Thus, allegations that occurred prior to June 23, 2009, are barred by the one-year statute of limitations (SOL). In the NOAA, Respondent charges Appellant with threatening to reveal sexually explicit photographs of LD in 2007. There is no evidence that anyone meeting the definition of a "person authorized to initiate an investigation" had knowledge of Appellant allegedly threatening to release the photographs until LD reported the threat in December 2009. Accordingly, the charge is not barred by the SOL.

**Telephonic Conversations with**

Appellant contends that his telephone conversations with were protected by the First Amendment of the Constitution of the United States. An employee may not be disciplined for speech protected by the First Amendment if the speech is a matter of public concern, and the employee's interest in free speech outweighs the government's interest in promoting the efficiency of the public services it performs through its employees. (*Voight v. Savell* (9th Cir. 1995) 70 F3d 1552, 1559-1561.) Speech is a matter of public concern if it relates to a matter of political, social, or other concern to the community. (*Id.*, at p. 1559.)

Here, Appellant made gratuitous racial comments regarding a former Deputy Director, falsely claimed to have sex with a confidant in the Director's Office of the DOJ,

and commented on the physical attributes of candidates for a task force. Appellant's statements do not relate to any political, social, or other matter of concern to the community. Accordingly, Appellant has no First Amendment right in the comments that he made during his telephone conversations with LD , as alleged in the NOAA.

**Public Safety Officer Bill of Rights (POBR) Violations**

POBR, codified at Section 3303 of the Government Code, provides the following:

When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. . .

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. . .

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

Appellant asserts that, as a peace officer, when he was "interrogated about his relationship with LD ," he was not afforded his POBR rights. However, the evidence failed to establish that at the time Appellant had a conversation during lunch with his supervisor about LD that Appellant was under investigation for conduct that could lead to punitive action.

**Appellant's Motions to Exclude Evidence**

At the commencement of the hearing, Appellant moved to exclude the following: digital recordings and transcriptions of those recordings; polygraph results of LD ;<sup>1</sup> and evidence obtained in violation of POBR.

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<sup>1</sup> Respondent stated that it would not be introducing LD 's polygraph results. Appellant's motion to exclude the polygraph is moot.

Appellant's motion to exclude digital recordings surreptitiously made at the direction of the Department of Justice (DOJ) and transcriptions of those recordings was denied by the undersigned in a separate order dated March 17, 2011. Appellant's motion to exclude evidence obtained in violation of POBR is denied as there was no finding that Respondent violated POBR.

### **ISSUES**

The issues to be resolved are:

1. Did Respondent prove the charges by a preponderance of the evidence?
2. If so, did Appellant's behavior violate Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (m) discourteous treatment of the public or other staff, (o) willful disobedience, (p) misuse of State property, (r) violation of the prohibitions set forth in accordance with section 19990 (conflict of interest), and/or (t) other failure of good behavior on or off duty causing discredit to Appellant's employer or to Appellant?
3. If so, is dismissal the appropriate penalty for Appellant's misconduct?

### **FINDINGS OF FACT**

A preponderance of the evidence establishes the following:

1. On September 14, 1996, Respondent employed Appellant as Special Agent (SA) at the Bureau of Narcotics Enforcement's (BNE) Los Angeles Regional Office (LARO). As an SA, Appellant conducted investigations with other law enforcement agencies, gathered evidence, prepared written investigative reports, testified in court and before the grand jury, filed complaints with local



District Attorneys' Offices, made arrests, and trained other law enforcement personnel. Prior to Appellant's employment with Respondent, he was a police officer (PO) with the Newport PD (PD) for six years.

2. On January 1, 2001, Appellant promoted to SA Supervisor.
3. On February 1, 2005, Appellant promoted to SA in Charge (SAC) and managed the LA Interagency Metropolitan Police Apprehension Crime Task Force (IMPACT). IMPACT was comprised of representatives from up to 50 municipal police agencies. Appellant supervised as many as 100 individuals, which included sworn and other local city and county employees.
4. On July 31, 2009, Appellant promoted to Senior SA in Charge of BNE LARO. On November 11, 2009, Appellant transferred to the BNE Riverside Regional Office, which is one of the largest BNE regional offices. Appellant was responsible for multiple task forces and supervised 10 or more supervisors and managers. Appellant briefly managed the Orange County BNE office, as well.
5. Appellant's job performance has been outstanding and he has brought positive recognition to the DOJ related to drug and gang suppression programs. Respondent has not previously disciplined Appellant.

**Relationship with**

6. In June of 2006, Appellant began a consensual sexual relationship with LD ( LD ). At the time, Appellant was going through a divorce. However, throughout their relationship, Appellant led LD to believe that he was married to give her "incentive" to be quiet about their relationship.

worked as an Administrative Assistant and Financial Analyst at LA IMPACT from 1998 to 2008. Appellant supervised LD from 2005 until 2008. On March 20, 2008, LD left LA IMPACT and accepted a position with the Placentia Police Department. During their relationship, Appellant took over 100 sexually explicit photographs and made a video recording of LD that he kept on the hard drive of his personal computer. LD also took sexually explicit photographs of herself and emailed them to Appellant.

7. In October of 2007, rumors of Appellant's relationship with LD surfaced at work. Jaime Robinson (Robinson), Staff Assistant, told Eric Anderson (Anderson), then Deputy Director of LA IMPACT, that she had information about the intimate relationship between LD and Appellant. Anderson told Robinson to relay the information to Douglas B. Law (Law), Commander, Pasadena Police Department, who was the Deputy Director of LA IMPACT. Ultimately, Law told Chief Singer (Singer), Whittier Police Department, who then was the LA IMPACT Chairman of the Board, what Robinson told him about the relationship.
8. While having lunch at a restaurant, Jerry Hunter (Hunter), Assistant Chief, BNE, told Appellant about the rumors. Appellant denied that he was having an affair with LD and said, "Do you think I am crazy?" Hunter asked Appellant if he had an explanation as to why the rumors had surfaced. Appellant responded that they had, in fact, gone to dinner. At the end of the conversation, Hunter did not believe that Appellant was having a sexual relationship with

9. Appellant confronted LD about the rumors. LD told Appellant that she had revealed the relationship to several co-workers. Appellant was upset and told LD to tell the co-workers that they were not seeing each other and that she had embellished the extent of their relationship. Appellant also told to tell Law that she had made up or embellished their relationship. Appellant also said they would break up now that rumors had surfaced and that he would reveal sexually explicit photographs of LD by placing them on the internet or emailing them to her son if she did not recant her statements that she was having a relationship with Appellant.
10. Appellant went to Law's office and denied that he was having an affair with LD. Appellant also spoke to Robinson and told her that LD was "delusional and crazy," and that he was disappointed in Robinson for thinking that he and LD were having a sexual relationship.
11. The following Tuesday, LD went to speak with Law. She also denied that she was having a relationship with Appellant. Law was surprised that came to see him as he had instructed Robinson not to speak to anyone about the information she had shared with him. LD told Law that the reason she came to him was that she and Appellant had spoken on the weekend.
12. In the fall of 2007, LA IMPACT employees Rea Pfeiffer (Pfeiffer) and Christy Dorman (Dorman) had pending lawsuits naming Appellant as a respondent. Pfeiffer alleged that during a meeting, Appellant stated words to the effect that he, "wanted to kick her [Pfeiffer] in the cooch." Dorman's complaint was related to not being allowed to take breaks and that her work venue had

changed without proper notification. LD and Robinson were potential witnesses in each case. Attorneys for LA IMPACT conducted witness preparation sessions.

13. In April of 2008, Appellant and LD renewed their consensual sexual relationship. During the course of their relationship, Appellant would periodically "take breaks" from the relationship. Appellant told LD that he thought he was being investigated or followed. From January 2009 until October 2009, Appellant and LD spoke on the telephone, but did not see each other.

**Events on October 27, 2009**

14. On October 27, 2009, Appellant drove his State-issued car from the DRE office in Commerce, California, to LD's residence in Brea which is east of Commerce. Appellant and LD had sex. Appellant was seated on the couch, picked up LD's cellular telephone, saw a risqué text, and asked her "What's this?" LD asked Appellant to stop looking through the cellular telephone, but Appellant continued to scroll through messages and the address book on the phone. Appellant accused LD of sleeping with other men. LD tried to retrieve the telephone from Appellant, but Appellant held LD's arm down to keep her from reaching the telephone as he held the phone in his other hand and continued to look at its contents. During the struggle for the telephone, LD ripped Appellant's shirt. Appellant then drove to Santa Maria for a task force meeting that began the following morning. Santa Maria is in Santa Barbara County, significantly north of

Commerce. By driving to Brea from Commerce to visit LD and then to Santa Maria rather than driving directly from Commerce to Santa Maria, Appellant added at least 50 miles to the trip.

15. On December 9, 2009, Appellant called LD while she was a work. became upset and decided to tell her supervisor, Placentia Chief of Police James Anderson, that Appellant had physically assaulted her on October 27, 2009, and in 2007, had threatened to release nude photographs of her if she did not recant a statement that she was having a sexual relationship with Appellant.
16. Chief of Police Anderson reported this conversation to DOJ Deputy Director Rick Lopes and to the Orange County District Attorney because he believed that Appellant had committed assault and battery specific to persons in a romantic relationship (domestic violence) and extortion causing another person to commit perjury.

**Telephone Conversation with Drylie on January 4, 2010**

17. On December 18, 2009, SA Gauthier (Gauthier) and SAC Nathan DaValle (DaValle) questioned LD . They asked LD whether she would be willing to surreptitiously record conversations between herself and Appellant as part of their investigation into allegations against Appellant. LD agreed. DaValle appointed SA Paul Stauts (Stauts) to conduct a criminal investigation of Appellant on behalf of the DOJ. LD made the recordings under the direction of SAC Paul Stauts. After each conversation, Stauts took

possession of the digital recorder, copied the recording, and returned the recorder to .

18. Appellant told LD about a fictitious informant in the Director's Office of the Division of Law Enforcement in Sacramento. The following exchange occurred during a recorded telephone conversation between LD and Appellant on January 4, 2010:

LD : Are you – Is that lady still letting you know if anything comes up?

APPELLANT: Yeah.

LD : Jesus.

APPELLANT: Director's office.

LD : The director of what?

APPELLANT: The Division of Law Enforcement.

LD : How – how do you – I'm afraid to even ask this. But how do you – how do you maintain such a good relationship with people to where they'll do that for you?

APPELLANT: I stuck my cock down her 70-year-old throat now and again.

LD : She's 70 years old?

APPELLANT: She's got to be damn close to it if not.

LD : Oh, Jesus.

APPELLANT: She reminds me – she reminds me of her son of something – I remind her of her son, her long-lost son.

**Telephone Conversation with LD on January 20, 2010**

19. In January 2010, the Board of the Parcel Interdiction Task Force (PACNET) was in the process of selecting an officer from the Placentia Police Department to fill a position on PACNET. PACNET is a small task force in Orange County investigating persons shipping drugs and money. The day-to-day operations of PACNET were run by a BNE supervisor who reported to Appellant.

20. In a recorded telephone conversation between LD and Appellant on January 20, 2010, in response to LD's question asking if Appellant would be flying out of Orange County Airport, Appellant responds that, "I only fly where the white people go. . . Yeah, white is right." Later in the conversation, and Appellant discuss the candidates for PACNET:

LD : Who do you want; the, the broad? Do you want [REDACTED] or [REDACTED]?

APPELLANT: I don't know, I don't know who they want. I have to look into it.

LD : [REDACTED], uh, came out number one, I think, and, uh, I can't remember who the other person was?

APPELLANT: Did she have big titties?

LD : No, she doesn't have big titties.

In discussing a male candidate for the task force, Appellant asked, "Does he have a big cock?" Appellant asked LD these questions because she was close to Placentia Chief of Police Anderson and "thought she might have some information that wasn't being disclosed to his [Appellant's] supervisor."

LD also asked Appellant if Law had retired. Appellant responded that Law was a "negro" and a "negroid." Appellant also stated, "Italians are just dirty whiteys, that's all."

21. LD told her supervisor, Anderson, about Appellant's comments during the telephone conversation of January 20, 2010, regarding the PACNET candidates. After learning of Appellant's conversation with LD, Anderson was concerned about placing a female under Appellant's supervision on PACNET. Anderson has never spoken with Appellant.

22. Hunter instructed Appellant several times to contact Anderson regarding placement of one of the employees on the PACNET task force. Appellant failed to call Anderson. However, Appellant told Hunter that he left a message and that Anderson did not return his call.

**Telephone Conversation on February 23, 2010**

23. The following exchange occurred regarding the events of October 27, 2009, during a recorded telephone conversation between LD and Appellant on February 23, 2010:

LD : . . . remember when you came over and the last time, and – why did you look through my phone? What was that all about?

APPELLANT: I don't know. I don't remember. . .

LD : . . . I was trying to get it away from you and you – what the hell, you held me down. What the fuck. What kind of behavior is that? I don't want you doing that kind of shit anymore to me.

APPELLANT: Okay. . .

LD : Oh, please. How did – did I – did I rip that shirt of yours? I think I did. Didn't I?

APPELLANT: You did. . . Now, what kind of behavior is that?

LD : You were holding me down on the couch. I was trying –

APPELLANT: And why was I doing that?

LD : Because you thought that I was seeing somebody.

APPELLANT: And I was right, wasn't I? And you lied about. And you even lied about it when I had you caught. . . . So it sounds like I was pretty justified, doesn't it . . .

LD : But don't ever hold me down like that. That's not nice. You don't do that to people you care about. It's just –

APPELLANT: Well, true. True. True. And you don't do – you don't lie and push on people that you care about either.

and Appellant also discussed the photographs of :

LD : We've been – we've been lovers for a long time. And then I told the girls about us, and that created a mess and, you know –

APPELLANT: Yeah, that's true. Who fucked that one up.



LD : You – you – you coached me on what to say to Rick Law.  
But then you had those pictures that you were going to put on the  
Internet or whatever you were going to do with them, so – but all  
that is over with and –

APPELLANT: I don't know what you're talking about.

24. At the conclusion of the criminal investigation, Stauts shared his report with the Orange Co. DA. The DA informed Stauts that he would prefer to also have Appellant interviewed.
25. On March 9, 2010, the Superior Court of California, County of Orange, granted LD 's request for a Temporary Restraining Order (TRO), which ordered Appellant not to harass, contact, or locate LD and to stay at least 100 yards away from her, and her job, home and vehicle. Among other things, the TRO states that ". . . in the next several days, he will be placed on administrative leave and possibly face criminal charges pursuant to the investigation following my [ LD's] complaint." On March 10, 2010, Stauts served the TRO on Appellant. Andy Durhan, Investigator, Orange County District Attorney's office, was present when Stauts served the TRO. Stauts attempted to speak with Appellant. Appellant stated words to the effect that he "would very much like to talk to him [Stauts] but would not do so without first getting an attorney."
26. Respondent placed Appellant on paid Administrative Time Off (ATO). Appellant was upset and angry and deleted photographs of LD from his computer. He did not delete photographs sent to him by LD after 2007.
27. Stauts prepared a supplemental report and turned the case into Michael Lubinski, Orange County District Attorney for criminal matters. An Assistant

District Attorney told Stauts that he was rejecting the case because there was insufficient evidence on dissuading a witness and not a serious enough case to warrant prosecution.

**Investigative Interview**

28. Alicia Fowler (Fowler), Senior Assistant Attorney General, and Barbara Seidman (Seidman), Supervising DAG, were asked to undertake an administrative investigation into whether Appellant violated statutory requirements of state employment. On April 5, 2010, Seidman and Fowler interviewed Appellant. Seidman admonished Appellant that he was required to answer questions truthfully. Specifically, Seidman stated that, "Your refusal to answer any question completely and accurately may be considered insubordination and could result in administrative discipline, up to and including termination."
29. Appellant was asked if he threatened to reveal sexually explicit photographs of LD to her son. Appellant responded, "No. I don't have any recollection of anything like that." Appellant was asked if he threatened to put the photographs on the internet. Appellant responded, "No. I don't think I did."
30. As to the skirmish on October 27, 2009, Appellant denied holding LD down while she was trying to get her cellular telephone. Appellant explained:

I extended my left arm with the cell phone trying to read it, and I'm holding it with my right and she's climbing on me and – you know, at first it was playful. But then she started getting mad. . . I gave her the cell phone. . . I would characterize it as me holding it [cellular telephone] at bay, her climbing on me, me trying to hold the phone away while – while reading it. . . Well, I mean, again, if

you say physically restrained by holding her back, yeah, I guess I did. You know, it's all how you want to characterize it.

Appellant also denied saying anything to LD about being stronger than she was and that it was not worth it for her to fight him.

31. Appellant described the following exchange that occurred during lunch with Hunter, his supervisor:

. . . he [Hunter] said the rumor mill is – the rumor is that you're – having an affair with LD . And I said, well, I'm not. Because I wasn't.

Appellant was asked whether anybody at LA IMPACT ever asked if he was having an affair or relationship of a sexual nature with LD . Appellant responded that he told Anderson, Law, and maybe Daren Kasten, a captain from Palos Verdes, that he was not having an affair with LD . Appellant also stated that he told LD , "Look, if you get asked by anybody, you know ... if any of the ones [girlfriends] you did talk to hit you up, the bottom line is we're not seeing each other, you know. Because we're not."

32. Appellant was asked about the discussion with LD about the Placentia Police Department members that interviewed for PACNET. Appellant stated that he did not recall discussing the size of the female candidate's breasts or the male candidate's penis. Appellant denied specific recollections of the conversation. However, Appellant stated the following:

. . . I thought it was unusual that Al Roth and the Placentia sergeant had picked the female officer and then they said, no, we're going to go with this other guy, and Al had did background on that other guy and something was wrong. So that didn't sit right with me. So it was a way for me to kind of get some background, you know, to figure out, you know, what's wrong with this guy, what's wrong with

this girl, why are they going with this guy. So I kind of just, you know – I guess investigative curiosity. I wanted to find out why this – there may be a problem. Maybe she knew something, maybe she heard something at work.

33. As to the reason for deleting photographs and the videotape of in March of 2010, Appellant stated that:

I obviously knew that I got put on administrative time off, and when I saw the restraining order, you know, it went bad with her. And I have – I figured, you know, at some point I'm going to be asked about them. You know, sort of the same thing, I just – I wanted it to be not in my – not under my control at that point. You know, I wanted to be rid of it. Plus, I was angry. . .

**DOJ Policies and Procedures**

34. On July 8, 2005, and November 21, 2008, Appellant signed that he received a copy of the DOJ Incompatibility statement, which provides that under the provisions of Government Code section 19990, the following are inconsistent, incompatible, or in conflict with the duties of its officers and employees:

1. Using the prestige or influence of an officer or employment in the DOJ . . .
2. Using time, facilities, equipment or supplies of the DOJ
3. Using confidential information acquired by virtue of employment by the DOJ for the officer's or employee's private gain or advantage, or the private gain or advantage of another. . .
4. Divulging confidential information, data, or records of the DOJ to any person to whom issuance of such information, data, or records has not been authorized . . .

35. On August 15, 2009, Appellant signed a certification that he completed a course on discrimination, harassment, and retaliation prevention, and that he participated in a discussion regarding the supervisor's role, rights, and responsibilities.

**CREDIBILITY DETERMINATION**

testified that Appellant threatened to expose sexually explicit photographs of her if she did not deny that she was involved in a sexual relationship with Appellant. Appellant denied LD's allegation. Because the testimony is contradictory, a credibility determination must be made.<sup>2</sup>

Appellant was adamant that he wanted to keep his relationship with LD secret and was angry when he learned that LD had told her co-workers about it. Appellant admitted multiple times during his testimony and in his investigative interview that he took steps to keep LD from revealing their relationship. He lied about his marital status, made up a confidential informant in the Director's Office, and told her that he was being investigated. Clearly, Appellant coerced LD into keeping their relationship secret. Given Appellant's efforts to keep LD quiet, her testimony that he threatened her is consistent with his behavior. He was having a sexual relationship with a subordinate employee, he was being sued by another subordinate for sexual harassment, and LD was a potential witness in the case. For all of the reasons above, LD's testimony is credited over Appellant's testimony.

As to the allegation that Appellant physically assaulted LD, LD testified that Appellant pinned her arm down on her couch while he scrolled through her cell phone texts, e-mails, and address book. Appellant denied that he held LD's arm down.

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<sup>2</sup> Evidence Code section 780 provides, in pertinent part: "Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

- ...  
(f) The existence or nonexistence of a bias, interest, or other motive.
- (g) A statement previously made by him that is consistent with his testimony at the hearing.
- (h) A statement made by him that is inconsistent with any part of his testimony at the hearing . . . "

Appellant testified that he "basically was trying to keep her off him and pushed her away." Appellant also testified that he did "not necessarily" recall holding her arm down." Rather, he "held her arm away from him." Although, when questioned, Appellant admitted that determining whether he had assaulted LD was all in how one characterized his actions.

It is undisputed that LD told Appellant to stop, yet Appellant continued to scroll through her telephone. Appellant also admittedly used force to keep LD away from the telephone. Appellant's testimony that he was upset because she was potentially seeing other men substantiates LD's testimony regarding Appellant's angry demeanor during the scuffle. During a recorded conversation, when LD raised Appellant's holding her down, Appellant never denies that he held LD down. Appellant testified that his comment to LD on the telephone regarding the incident was "taken out of context" and that he made the comment in a "rhetorical" manner. Appellant's explanation is not believed. Additionally, Appellant has substantial motivation to minimize his behavior as he faces losing his job and career. For the above reasons, LD's testimony is credited over Appellant's.

#### **PRINCIPLES OF LAW AND ANALYSIS**

In a disciplinary appeal, the appointing power must prove the charges against the employee by a preponderance of the evidence. (Evid. Code, § 115; *Lyle Q. Guidry* (1995) SPB Dec. No. 95-09.) "Preponderance of the evidence" is usually defined in terms of 'probability of truth.' (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482-483; Evid. Code, § 115.)

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**Inexcusable Neglect of Duty**

Inexcusable neglect of duty under Government Code section 19572, subdivision (d), is the intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty. (*Gayle McCormick* (2003) SPB Dec. No. 03-06; *Robert Herndon* (1994) SPB Dec. No. 94-07.) In *Errol L. Dunnigan* (1993) SPB Dec. No. 93-31, the Board set forth the criteria for determining whether an employee should be held responsible for violating policy. The Board concluded that (1) there must be a clear policy, (2) the employee must have notice of such a policy, and (3) the department must intend to enforce that policy.

As a high level manager, Appellant had a duty to uphold Respondent's policies regarding sexual harassment and discrimination. Instead, Appellant made derogatory statements regarding women and minorities and communicated those views to an employee of another police agency.

Upon service of the TRO, Appellant was aware that he was under criminal investigation regarding his actions with LD and that the photographs of LD may be used as evidence in a criminal manner. As a peace officer since 1996, and involved with collecting and securing evidence from drug and other crime scenes, Appellant was well aware of the need to preserve evidence. He did not. Rather, Appellant intentionally deleted photographs of LD that could potentially implicate him. Also, Appellant was informed of his duty to be truthful during his investigative interview. He was not.

Accordingly, the charge of inexcusable neglect of duty pursuant to Government Code section 19572, subdivision (d), is sustained.

**Dishonesty**

Dishonesty under Government Code section 19572, subdivision (f) requires a showing of intentional misrepresentation of known facts, or a willful omission of pertinent facts, or a disposition to lie, cheat, or defraud. (*Nhut Minh Nguyen* (1999) SPB Dec. No. 99-01; *Eliette Sandoval* (1995) SPB Dec. No. 95-15.)

At hearing, Appellant admitted that he made up a fictitious 70-year old confidential informant in the Director's Office. Appellant also was dishonest during his investigative interview when he denied holding LD down on the couch, denied telling that he had engaged in sex with the fictitious informant, and denied making comments about the breast and penis sizes of Placentia Police Department task force candidates. Appellant consistently denied his relationship with LD. Appellant was not truthful with Hunter when he claimed to have called the Placentia Police Chief.

Accordingly the charge of dishonesty under Government Code section 19572, subdivision (f), is sustained.

**Discourteous Treatment**

Discourteous treatment of the public or other employees under Government Code section 19572, subdivision (m) involves conduct where a person displays hostility towards others, speaks in an abrasive tone of voice, and has a brusque demeanor. (*Walker v. State Personnel Board* (1971) 16 Cal.App.3d 550; *Gayle McCormick* (2003) SPB Dec. No. 03-06.)

Appellant was hostile and threatening to LD. Appellant's behavior constitutes discourteous treatment pursuant to Government Code section 19572, subdivision (m).

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**Willful Disobedience**

Willful disobedience under Government Code section 19572, subdivision (o) is found where an employee knowingly or intentionally violates a direct command or prohibition. (*Ethel Warren* (1999) SPB Dec. No. 99-09; *Richard J. Hildreth* (1993) SPB Dec. No. 93-22.)

Respondent did not substantiate by a preponderance of the evidence or argue in its closing brief that Appellant's conduct constituted willful disobedience. The charge of willful disobedience under Government Code section 19572, subdivision (o), is stricken.

**Misuse of State Property**

Misuse of state property under Government Code section 19572, subdivision (p) is established in those situations where state property is stolen or is intentionally used for an improper or non-state purpose, often, but not always, for personal gain. (*Nhut Minh Nguyen* (1999) SPB Dec. No. 99-01.) Misuse of state property may also connote improper or incorrect use, or mistreatment or abuse, of state property. (*Robert Boobar* (1993) SPB Dec. No. 93-21.)

Appellant drove his state-issued car to LD house in Brea from the Commerce Office. LD 's home is east of Los Angeles and was not on the way to Santa Maria.

Appellant used his state car for non-state purposes and for his personal gain, to visit LD . Accordingly, Appellant misused his state-issued car and the charge under Government Code section 19572, subdivision (p) is sustained.

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**Violation of Section 19990**

Violation of section 19990 under Government Code section 19572, subdivision (r) provides that an employee may be disciplined for violating the prohibitions against incompatible activities set forth in Government Code section 19990. Section 19990 provides that a state employee shall not engage in any activity that is inconsistent, incompatible, in conflict with, or inimical to, his or her job duties. It also grants each appointing power the right to determine which employee activities are incompatible with state employment. (Gov. Code, § 19990.) The employer, however, is required to give notice to an employee of the prohibited behavior before discipline may be imposed. (*Jeffrey Crovitz* (1996) SPB Dec. No. 96-19.)

Respondent did not substantiate by a preponderance of the evidence or argue in its closing brief that Appellant's conduct violated section 19990 under Government Code section 19572, subdivision (r). Accordingly, this charge is stricken.

**Other Failure of Good Behavior**

Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment under Government Code section 19572, subdivision (t) can only be found where appellant has engaged in an intentional or grossly negligent act of misconduct. (*Irven Martin McMillan* (1994) SPB Dec. No. 94-12.) The misconduct must be of such a nature as to reflect upon the employee's job. (*Ralph Rey* (1999) SPB Dec. No. 99-10.) In other words, [1] the "misconduct must bear some rational relationship to [the employee's] employment and [2] must be of such character that it can easily result in

the impairment or disruption of the public service." (*Dennie L. Melton* (1995) SPB Dec. No. 95-10, citing *Yancey v. SPB* (1985) 167 Cal.App.3d 478, 483.)

The SPB has held that a peace officer may be disciplined for physical abuse he/she inflicts on another while off duty. In *John Hughes* (2003), SPB Dec. 03-05, a Correctional Officer grabbed his wife's arm in an angry manner after finding reason to suspect she was having an affair. (See also *Randolph Luna* (1998) SPB Dec. No. 98-08.)

Here, Appellant held LD's arm down out of anger while he scrolled through her cellular telephone after viewing a risqué text. Appellant's behavior was remarkably similar to the behavior of peace officers Hughes and Luna. Consistent with the SPB's findings in those cases, Appellant's behavior constitutes failure of good behavior.

Moreover, Appellant made racially insensitive statements about an African American Deputy Director, made racist statements that "white is right," and demeaned candidates for a task force position by discussing their "titties" and penis with an employee of the candidates' agency. Appellant was a high-level manager dealing with diverse individuals on multi-agency task forces.

It is unnecessary that the public have actual knowledge of the misconduct. (*Nightingale v. State Personnel Board* (1972) 7 Cal.3d 507, 513-514.) Rather, "It is enough that, should the misconduct become known, it would discredit his agency or his employment." (*Mark R. Masai* (1995) SPB Dec. No. 95-01, p. 9.) Appellant's statements regarding law enforcement personnel from other agencies reflects negatively on Appellant and undermines the reputation of Respondent. Appellant's

behavior constitutes failure of good behavior as does using misusing his state-issued car.

Accordingly, the charge of other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment under Government Code section 19572, subdivision (t) is sustained.

### **PENALTY**

#### **Penalty**

The Court in *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 217-218, identified the factors to be considered by the SPB in determination of penalty:

... [W]e note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in [h]arm to the public service. (Citation.) Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.

A peace officer's job is a position of trust and the public has a right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Appellant was a peace officer in a high level management position who failed to act with integrity and honesty. "Honesty, credibility and temperament are crucial to the proper performance of an officer's duties. Dishonesty is incompatible with the public trust." (*Talmo v. Civil Service Commission* (1991) 231 Cal.App.3d 210.) Dishonesty is not an isolated act; it is more a continuing trait of character. (*Paulino v. Civil Service Com.* (1985) 175 Cal.App.3d 962, 972.) Appellant has shown disregard for the truth in his personal and professional life. Appellant breached the public's trust by failing to honestly respond to questions during his investigative interview, in

communicating with his supervisor, and with LD. Appellant's tale of an internal confidant resulted in Respondent undertaking an investigation to ascertain whether there was, in fact, someone in the Director's Office who was providing confidential information to Appellant. Respondent could have been harmed if the public or someone from another law enforcement agency lost trust in the DOJ because of Appellant's dishonesty about his alleged confidant. Because of the special position of trust peace officers hold, dishonesty by peace officers warrants harsh punishment. (*Anderson v. State Personnel Bd.* (1987) 194 Cal.App.3d 761.)

Discourtesy by a supervisor towards an inferior employee also warrants harsher punishment because the inferior employee may reasonably feel too intimidated to respond. (*Walker v. State Personnel Bd.*, *supra*, 16 Cal.App.3d at p. 553.) As a supervisor, Appellant was expected to set a proper example and ensure that his employees conduct themselves appropriately. Instead, Appellant's conduct implied that destroying potential evidence, intimidating another employee, making up a confidential informant and investigations for one's own benefit, and expressing racial and sexist views contrary to DOJ policies, were condoned. Appellant set an extremely poor example.

Appellant also committed other misconduct that harmed the public service. In particular, Appellant's derogatory and racial comments were contrary to DOJ policies and placed the DOJ in a poor light with allied agencies.

Appellant offered excuses for all of his failures. The only remorse Appellant expressed was that he opened his hotel room door to LD in 2006 and engaged in sex

with her. Both strongly suggest a significant likelihood of recurrence and weigh in favor of a substantial penalty. (*Robert R. Watson* (1994) SPB Dec. No. 94-10.)

Appellant's long-term employment and work performance potentially weigh in favor of a lesser penalty. However, considering Appellant's position, Appellant's propensity to be dishonest, as well as his failure to take any responsibility for his conduct, the penalty of dismissal is just and proper.

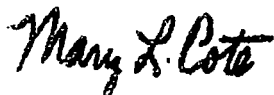
### **CONCLUSIONS OF LAW**

1. Appellant's conduct constitutes cause for discipline under Government Code section 19572 subdivisions (d) Inexcusable neglect of duty, (f) dishonesty, (m) discourteous treatment of the public or other staff, (p) misuse of State property, and (t) other failure of good behavior on or off duty causing discredit to Appellant's employer or to Appellant.
2. Appellant's conduct does not constitute (o) willful disobedience and (r) violation of the prohibitions set forth in accordance with section 19990 (conflict of interest).
3. The appropriate penalty is dismissal.

### **ORDER**

Respondent's Dismissal of William Tellsh is **SUSTAINED**.

DATED: August 25, 2011



Mary L. Cote  
Administrative Law Judge  
State Personnel Board



801 Capitol Mall Sacramento, CA 95814 | 866-844-8671 | www.spb.ca.gov

Governor Edmund G. Brown Jr.

WILLIAM TELISH  
v.  
CALIFORNIA DEPARTMENT OF  
JUSTICE

Case No. 10-3353A

BOARD DECISION

Appeal from Dismissal

**APPEARANCES:** Kasey A. Castillo, Attorney at Law, on behalf of Appellant; Chris Knudson, Supervising Deputy Attorney General, on behalf of the California Department of Justice.

**BEFORE:** Maeley Tom, President; Patricia Clarey, Vice-President; and Richard Costigan and William Fox, Members.

### DECISION

This case is before the State Personnel Board (SPB or Board) after the Board rejected the Administrative Law Judge's (ALJ) Proposed Decision to consider whether the surreptitious recordings of Appellant's conversations with Ms. LD are admissible under Penal Code section 632. And if not, is there sufficient evidence to uphold the termination of Appellant's employment?

The Board finds, after adopting the ALJ's findings of fact and conclusions of law on all other matters, that the recordings are inadmissible. The Board further finds that there was sufficient evidence otherwise to support Appellant's dismissal.

### SUMMARY OF FACTS<sup>1</sup>

Respondent, California Department of Justice (DOJ) dismissed Appellant William Telish, a Senior Special Agent in Charge, alleging that Appellant intimidated, threatened to release sexually explicit photographs of, and physically assaulted a subordinate employee with whom he had a consensual relationship. DOJ also alleges that

<sup>1</sup> Given that the Board adopts all of the ALJ's Findings of Fact, the facts recited in this Decision are limited to those salient facts regarding the admissibility of the recordings.

Appellant misused his State issued vehicle. DOJ further alleges that Appellant made derogatory racial comments about a supervisor discussed the physical attributes of candidates for a position on a task force, falsely claimed to have an informant who provided him with confidential information, was dishonest during his investigatory interview, and destroyed evidence.

In June of 2006, while working as Senior Special Agent in Charge (SAC) at the Bureau of Narcotics Enforcement's (BNE) LA Interagency Metropolitan Police Apprehension Crime Task Force (IMPACT), Appellant began a consensual sexual relationship with a subordinate employee, LD ( LD ), who worked as an Administrative Assistant and Financial Analyst. Their relationship continued on and off until the end of 2009. LD was one of approximately 100 employees supervised by Appellant. Appellant supervised LD from 2005 until 2008. On March 20, 2008, left LA IMPACT and accepted a position with the Placentia Police Department.

At the beginning of their relationship, despite the fact that Appellant was going through a divorce, he led LD to believe that he was married in order to give her incentive to be quiet about their relationship. During their relationship, Appellant took over 100 sexually explicit photographs and made a video recording of LD that he kept on the hard drive of his personal computer. LD also took sexually explicit photographs of herself and emailed them to Appellant.

In October of 2007, rumors of Appellant's relationship with LD surfaced at work. While having lunch at a restaurant with Appellant, Jerry Hunter (Hunter), Assistant Chief, BNE, inquired about the rumors. Appellant denied the relationship and said, "Do you think I am crazy?" Appellant admitted however that he had gone to dinner



with LD . By the end of the conversation, Hunter believed Appellant's account of his platonic work relationship with LD . Appellant confronted LD about the rumors, upon which she explained that she had revealed their relationship to several co-workers. Appellant was upset and instructed LD to deny their relationship and tell the co-workers that she had embellished the extent of it. Appellant also instructed to tell Douglas Law (Law), Deputy Director of LA IMPACT, that she had made up or embellished their relationship. Appellant threatened to reveal sexually explicit photographs of LD by placing them on the Internet or emailing them to her son if she did not recant her statements about being in a relationship with Appellant. Both Appellant and LD , at separate times, told Law that the affair was not true.

On October 27, 2009, Appellant drove his State-issued vehicle from the DRE office in Commerce, California, to LD 's residence in Brea, California, where they had sex.<sup>2</sup> At some point, while seated on LD 's couch, Appellant inquired about a risqué text he saw on LD 's cellular telephone. He kept looking through the phone after being asked to stop and accused LD of sleeping with other men. A struggle for the phone ensued where Appellant held LD 's arm down to keep her from reaching the phone, which was held in Appellant's other hand. During the struggle, LD ripped Appellant's shirt. On December 9, 2009, LD reported to Placentia Chief of Police, James Anderson (Anderson), that she had been assaulted by Appellant and that in 2007 Appellant threatened to release nude photographs of her if she failed to recant statements she had made about their affair. Believing that Appellant committed assault

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<sup>2</sup> Appellant's trip to 's residence put approximately 50 miles on his state issued vehicle.

and battery and extortion, Anderson reported LD 's allegations to DOJ Deputy Director Rick Lopes and to the Orange County District Attorney.

In January 2010, DOJ began a criminal investigation regarding LD 's allegations against Appellant. As part of the investigation, LD surreptitiously recorded multiple telephone conversations she had with Appellant. The following-- exchange occurred during a conversation held on January 4, 2010, regarding a fictitious informant in the Director's Office of the Division of Law Enforcement in Sacramento:

...  
LD : Are you -- Is that lady still letting you know if anything comes up?

APPELLANT: Yeah

LD : Jesus.

APPELLANT: Director's office.

LD : The director of what?

APPELLANT: The Division of Law Enforcement.

...  
LD : How -- how do you -- I'm afraid to even ask this. But how do you -- how do you maintain such a good relationship with people to where they'll do that for you?

APPELLANT: I stuck my cock down her 70-year-old throat now and again.

LD : She's 70 years old?

APPELLANT: She's got to be damn close to it if not.

LD : Oh, Jesus.

APPELLANT: She reminds me -- she reminds me of her son of something -- I remind her of her son, her long-lost son.

On January 20, 2010, a recorded conversation took place discussing candidates to fill a peace officer's position with the Board of the Parcel Interdiction Task Force (PACNET), a small task force which reported to Appellant. In response to LD 's

question about whether Appellant would be flying out of Orange County Airport, Appellant said, "I only fly where the white people go. . . Yeah, white is right." The following exchange took place later in the conversation discussing candidates for PACNET:

LD : Who do you want, the the broad? Do you want [REDACTED] or [REDACTED]?  
APPELLANT: I don't know, I don't know who they want. I have to look into it.  
LD : [REDACTED], uh, came out number one, I think, and, uh, I can't remember who the other person was?  
APPELLANT: Did she have big titties?  
LD : No, she doesn't have big titties.

In discussing a male candidate for the task force, Appellant asked, "Does he have a big cock?" In addition, Appellant referred to Law as a "negro" and a "negroid." He also stated, "Italians are just dirty whiteys, that's all."

On February 23, 2010, the following exchange took place regarding LD's allegation of the October 27, 2009 assault:

LD : . . . remember when you came over and the last time, and – why did you look through my phone? What was that all about?  
APPELLANT: I don't know. I don't remember. . .  
LD : . . . I was trying to get it away from you and you – what the hell, you held me down. What the fuck. What kind of behavior is that? I don't want you doing that kind of shit anymore to me.  
APPELLANT: Okay. . .  
LD : Oh, please. How did – did I – did I rip that shirt of yours? I think I did. Didn't I?  
APPELLANT: You did. . . Now, what kind of behavior is that?  
LD : You were holding me down on the couch. I was trying –

APPELLANT: And why was I doing that?

LD : Because you thought that I was seeing somebody.

APPELLANT: And I was right, wasn't I? And you lied about. And you even lied about it when I had you caught. ... So it sounds like I was pretty justified, doesn't it ...

LD : But don't ever hold me down like that. That's not nice. You don't do that to people you care about. It's just –

APPELLANT: Well, true. True. True. And you don't do – you don't lie and push on people that you care about either.

LD and Appellant also discussed the photographs of :

LD : We've been – we've been lovers for a long time. And then I told the girls about us, and that created a mess and, you know –

APPELLANT: Yeah, that's true. Who fucked that one up?

LD : You – you – you coached me on what to say to Rick Law. But then you had those pictures that you were going to put on the Internet or whatever you were going to do with them, so – but all that is over with and –

APPELLANT: I don't know what you're talking about.

On March 9, 2010, Appellant was served with a Temporary Restraining Order (TRO) directing Appellant not to harass, contact, or locate LD and to stay at least 100 yards away from her, her job, home and vehicle. Soon after, Appellant was placed on paid administrative time off. As a result, out of anger, Appellant deleted many of the photographs of LD from his computer. After being provided with a report from DOJ, the Orange County District Attorney's office rejected filing a criminal matter against Appellant.

### **PROCEDURAL SUMMARY**

Appellant appealed his dismissal to the SPB. The hearing was conducted on February 28, and March 1 – 4, 2011. At the commencement of the hearing, Appellant

moved to exclude evidence of the surreptitious recordings between him and LD contending that, among other legal theories, the recordings were made in violation of California Penal Code section 632. He argued that the recordings were made without his consent, were not recorded as part of a pending criminal investigation with probable cause, were not recorded with the supervision of a law enforcement agency, and were inadmissible during an administrative hearing. On March 17, 2011, the ALJ issued an Order, separate from her Proposed Decision dated August 25, 2011, denying Appellant's motion. The Board rejected the ALJ's Proposed Decision and decided to hear the case itself. The parties appeared and made Oral Arguments before the Board on December 13, 2011.

The Board now issues this Decision upholding the ALJ's Proposed Decision dismissing Appellant. However, the Board reverses the ALJ's March 17, 2011, ruling and finds that evidence obtained from the surreptitious recordings is inadmissible. Additionally, the Board finds that despite exclusion of the recordings, sufficient evidence exists to uphold the dismissal.

### **ISSUES**

The issues before the Board are:

1. Is the denial of Appellant's Motion to Exclude Evidence obtained from the surreptitious recordings between him and LD legally proper under the circumstances of this case?
2. Should the ALJ's Proposed Decision dismissing Appellant be upheld?

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**PRINCIPLES OF LAW AND ANALYSIS**

**Motion to Exclude Evidence of Surreptitious Recordings**

Appellant moved to exclude evidence of the surreptitious recordings on the grounds that the recordings were obtained in violation of Penal Code section 632, subdivision (d), which prohibits the use of surreptitious recordings in any judicial, administrative, administrative, legislative proceeding.<sup>3 4</sup> The ALJ denied Appellant's Motion, holding that the recordings are admissible under Penal Code section 633 and Title III of the Omnibus Crime Control Safe Street Act of 1968 (18 U.S.C. §§ 2510-2521) (The Act).<sup>5 6</sup> These state and federal laws permit surreptitious recordings when made

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<sup>3</sup> Appellant moved to exclude evidence of the surreptitious recordings on additional legal theories of which are not discussed in this Decision as the Board upholds the ALJ's rulings regarding those matters.

<sup>4</sup> Penal Code 632 provides in pertinent part:

(a) Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication ..., shall be punished by a fine ... or imprisonment ... or by both ....

...  
(c) The term "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto....

(d) ... *no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.* (Emphasis added.)

<sup>5</sup> Section 633 provides in pertinent part:

Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits the Attorney General, any district attorney, ..., or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record....

Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders inadmissible any evidence obtained by the above-named persons by means of overhearing or recording any communication that they could lawfully overhear or record....

by a person acting at the direction of law enforcement officers in pursuit of a criminal investigation. (*Id.*) The ALJ stated that since the recordings were performed at the direction of the DOJ and related to a criminal investigation of serious crimes, the exceptions under Penal Code section 633 and The Act applied.

The Board agrees that these exceptions apply to the extent that they allowed to record her telephone conversations with Appellant at the direction of the DOJ. However, the Board disagrees with permitting the recordings as evidence during an administrative hearing.

The court has clearly stated that section 633 is intended *solely* to permit law enforcement officers to continue to use electronic devices in criminal investigations, necessary in the performance of their duties in detecting crimes and apprehending

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<sup>6</sup> The Act provides a scheme for regulating wiretapping and electronic surveillance. The Act permits interceptions to law enforcement officers "in connection with the investigation of the serious crimes listed in section 2516." (*United States v. Giordano* (1974) 416 U.S. 505, 514.)

Section 2516(2), provides the following:

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

criminals. (*Rattray v. City of National City* (1994) 51 F.3d 793.) In that case, a city police officer who resigned facing termination for dishonesty, sued the city for invasion of privacy for surreptitiously recording a conversation between him and a co-worker. The city argued that Penal Code section 633 permitted such recording since it was done pursuant to the direction of the police captain. The 9<sup>th</sup> Circuit Court disagreed, stating that the right to privacy is a fundamental right enshrined in the California Constitution and having one's personal conversations secretly recorded infringed upon the constitutionally guaranteed right to privacy. Relying on the California Supreme Court's holding in *Long Beach City Employees Ass'n v. City of Long Beach* (1986) 41 Cal.3d 937, that the California Legislature may not discriminate among its citizens in granting important privacy rights to some but not to others without a compelling justification, the 9<sup>th</sup> Circuit Court ruled that section 633 cannot be read as to exclude only police employees from the privacy rights prescribed by section 632. (*Rattray v. City of National City, supra*, 51 F.3d 793, 798; *White v. Davis* (1975) 13 Cal.3d 757.) Similarly in this case, even though the recording was performed pursuant to the direction of the DOJ in connection with a criminal investigation, the use of the recording was to discipline a DOJ employee in an administrative hearing, betraying the very purpose of the legislation, which is to detect crimes and apprehend criminals. Simply because DOJ obtained the recordings as part of a criminal investigation, does not mean that it has free reign to use the recordings at its own volition. As such, the ALJ's ruling denying Appellant's motion to exclude is reversed.



The ALJ's Proposed Decision Dismissing Appellant

Reversing the ALJ's ruling on Appellant's Motion to Exclude does not invalidate the ALJ's Proposed Decision sustaining Appellant's dismissal. Independent of the recordings, sufficient evidence exists in support of each cause of action for discipline found by the ALJ. The majority of the evidence received in support of the sustained charges came from the testimony of both Appellant and LD . Notwithstanding the recordings, each factual basis in support of each sustained charge is corroborated by live testimony and/or other evidence admitted at hearing. As such, the ALJ's ruling denying Appellant's Motion to Exclude was a harmless error<sup>7</sup>, and, thus, the ALJ's penalty analysis in support of Appellant's dismissal shall be left intact.

CONCLUSION

The ALJ's ruling on Appellant's Motion to Exclude is reversed. Having found that the remainder of the ALJ's Proposed Decision is supported by substantial evidence, the Board upholds the ALJ's Decision dismissing Appellant from his position as Senior Special Agent in Charge at the DOJ.

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<sup>7</sup> A harmless error is an error contributed to the verdict obtained or the trier of fact would have reached the verdict absent the error. (*People v. Concha* (2010) 182 Cal.App.4<sup>th</sup> 1072; *Neder v. U. S.* (1999) 527 U.S. 119.)

**ORDER**

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is hereby **ORDERED** that:

1. The ALJ's ruling on Appellant's Motion to Exclude Tape Recorded Conversations Between Appellant and LD is reversed, and the remainder of the Proposed Decision is adopted by the Board.
2. The ALJ's August 25, 2011, Proposed Decision is attached hereto and shall be provided to the parties.

**STATE PERSONNEL BOARD**

Maeley Tom, President  
Patricia Clarey, Vice President  
Anne Sheehan, Member  
Richard Costigan, Member  
Kimiko Burton, Member

\*\*\*\*\*

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on June 21, 2012.

  
SUZANNE M. AMBROSE  
Executive Officer



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Governor Edmund G. Brown Jr.

**WILLIAM TELISH  
v.  
CALIFORNIA DEPARTMENT OF  
JUSTICE**

**Appeal from Dismissal**

**Case No. 10-3353**

**RESOLUTION**

**WHEREAS**, the State Personnel Board has considered carefully the Proposed Decision filed by the Administrative Law Judge (ALJ) in the matter of the appeal by Appellant, William Telish, Case No. 10-3353, from Dismissal, with California Department of Justice (Respondent); and

**IT IS RESOLVED AND ORDERED THAT:**

1. The attached Proposed Decision of the Administrative Law Judge is **REJECTED**;
2. The Board will decide the case itself and the matter shall be set for written and/or oral argument before the Board;
3. The parties' right to argue other matters is not limited. However, the Board invites particular discussion on the following issues:
  - (a) Is the surreptitious recording of Appellant's conversation with Ms. Drylie admissible under Penal Code, section 632 et al.?
  - (b) If the recording is inadmissible, what is the proven misconduct based on the admissible evidence and the appropriate penalty for the proven misconduct?
4. The Board will decide the case upon the record, including the transcript;

5. The parties will be notified of the procedures for ordering transcripts and submission of written argument as well as the procedure for requesting oral argument.

\* \* \* \* \*

The foregoing Resolution was made and adopted by the State Personnel Board in Case No. 10-3353 during its meeting of September 6, 2011, as reflected in the record of the meeting and Board minutes.

Dated: September 8, 2011

/s/SUZANNE M. AMBROSE  
SUZANNE M. AMBROSE  
Executive Officer

WILLIAM TELISH  
v.  
CALIFORNIA DEPARTMENT OF JUSTICE  
  
Appeal from Dismissal

Case No. 10-3353  
  
Proposed Decision

**STATEMENT OF THE CASE**

This matter came on regularly for hearing before Mary L. Cote, Administrative Law Judge (ALJ), State Personnel Board (SPB), on February 28, and March 1 - 4, 2011, in Los Angeles, California. The case was submitted upon receipt of closing written arguments on April 27, 2011.

Appellant, William Telish, was present and represented by Christy L. O'Donnell, Esquire, and Brianne R. Gardner, Esquire, McCune & Harber, LLP.

Respondent, California Department of Justice (Respondent or DOJ), was represented by Chris A. Knudsen, Supervising Deputy Attorney General (DAG), and Christine Mertsen, DAG, Office of the Attorney General, DOJ.

Certified shorthand report, Deanna L. Haaker, Norman Schall & Associates, was present at the request of Appellant, on February 28, 2011. Waukeen McCoy, Esquire, representing witness, LD , was present during her testimony.

Respondent dismissed Appellant, a Senior Special Agent in Charge, effective close of business on July 19, 2010. Respondent alleges that Appellant intimidated, threatened to release sexually explicit photographs of, and physically assaulted a subordinate employee with whom he had a consensual relationship. Respondent also alleges that Appellant misused his State issued vehicle. Respondent further alleges

that Appellant made derogatory racial comments about a supervisor, discussed the physical attributes of candidates for a position on a task force, falsely claimed to have an informant who provided him with confidential information, was dishonest during his investigatory interview; and destroyed evidence.

Appellant denies the allegations. Appellant also asserts that the investigation was incomplete and politically motivated, and his private conversations were protected by the First Amendment of the United States Constitution

### **PROCEDURAL MATTERS**

#### **Appellant's Motion to Continue the Hearing**

At the commencement of the hearing on February 28, 2011, Appellant made a motion to continue the hearing because he recently retained a new attorney, O'Donnell, who intended to file a Whistleblower Retaliation Complaint and various motions. On February 22, 2011, when Appellant formally substituted his legal representation to O'Donnell, he was aware of the impending hearing dates and did not request a continuance. Also, O'Donnell participated in the Prehearing Conference on December 10, 2010, as Appellant's counsel in related civil matters against the State, and was familiar with the case. The motion to continue was denied for lack of good cause.

#### **Appellant's Motion to Strike**

Appellant moved to strike the following: Section V of the NOAA, charges related to telephonic conversations with LD, and allegations falling outside of the one year statute of limitations. Respondent objected to the motion as untimely.

California Code of Regulations, Title 2, section 60.1, subdivision (a), provides that a motion to strike "shall be filed with the Appeals Division no later than 90 days

from the date the appeal or complaint was filed with the SPB." This regulation went into effect on August 18, 2010. Thus, any motion to strike was to be filed no later than November 17, 2010. Appellant failed to file his motion before November 17, 2010. Appellant's motion to strike is untimely, and, therefore, denied. Even if Appellant established good cause for failing to meet the filing requirements, the motion to strike is denied for the following reasons:

**Section V of the NOAA**

The first four paragraphs of Section V provide minimal background information and the remaining paragraphs specify the alleged activities for which the NOAA was taken. There is no legal basis to strike Section V.

**One Year Statute of Limitations**

Government Code section 3304, subdivision (d)(1), states in pertinent part:

Except as provided in this subdivision and subdivision (g), no punitive action . . . shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. . . . In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year . . .

In *R.B. (2008)* SPB Dec. No. 08-02, the Board clarified the definition of "a person authorized to initiate an investigation into peace officer misconduct" pursuant to Section 3304, subdivision (d), as follows:

Absent any specific identification or authorization by the appointing power, the 'person authorized to initiate an investigation' must be at a supervisory level or higher, have been a witness to or otherwise have knowledge of the underlying alleged misconduct, and not have participated in the underlying alleged misconduct.

"The date upon which an administrative agency discovers misconduct is a question of fact, as is the reasonable diligence with which the person authorized to initiate an investigation into misconduct acted." (*Haney v. City of Los Angeles* (2003) 109 Cal.App.4th 1, 8.)

The NOAA was served on Appellant on June 23, 2010. Thus, allegations that occurred prior to June 23, 2009, are barred by the one-year statute of limitations (SOL). In the NOAA, Respondent charges Appellant with threatening to reveal sexually explicit photographs of LD in 2007. There is no evidence that anyone meeting the definition of a "person authorized to initiate an investigation" had knowledge of Appellant allegedly threatening to release the photographs until LD reported the threat in December 2009. Accordingly, the charge is not barred by the SOL.

**Telephonic Conversations with**

Appellant contends that his telephone conversations with LD were protected by the First Amendment of the Constitution of the United States. An employee may not be disciplined for speech protected by the First Amendment if the speech is a matter of public concern, and the employee's interest in free speech outweighs the government's interest in promoting the efficiency of the public services it performs through its employees. (*Voight v. Savell* (9th Cir. 1995) 70 F3d 1552, 1559-1561.) Speech is a matter of public concern if it relates to a matter of political, social, or other concern to the community. (*Id.*, at p. 1559.)

Here, Appellant made gratuitous racial comments regarding a former Deputy Director, falsely claimed to have sex with a confidant in the Director's Office of the DOJ,



and commented on the physical attributes of candidates for a task force. Appellant's statements do not relate to any political, social, or other matter of concern to the community. Accordingly, Appellant has no First Amendment right in the comments that he made during his telephone conversations with LD, as alleged in the NOAA.

**Public Safety Officer Bill of Rights (POBR) Violations**

POBR, codified at Section 3303 of the Government Code, provides the following:

When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. . .

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. . .

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

Appellant asserts that, as a peace officer, when he was "interrogated about his relationship with LD" he was not afforded his POBR rights. However, the evidence failed to establish that at the time Appellant had a conversation during lunch with his supervisor about LD that Appellant was under investigation for conduct that could lead to punitive action.

**Appellant's Motions to Exclude Evidence**

At the commencement of the hearing, Appellant moved to exclude the following: digital recordings and transcriptions of those recordings; polygraph results of LD;<sup>1</sup> and evidence obtained in violation of POBR.

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<sup>1</sup> Respondent stated that it would not be introducing Drylie's polygraph results. Appellant's motion to exclude the polygraph is moot.

Appellant's motion to exclude digital recordings surreptitiously made at the direction of the Department of Justice (DOJ) and transcriptions of those recordings was denied by the undersigned in a separate order dated March 17, 2011. Appellant's motion to exclude evidence obtained in violation of POBR is denied as there was no finding that Respondent violated POBR.

### **ISSUES**

The Issues to be resolved are:

1. Did Respondent prove the charges by a preponderance of the evidence?
2. If so, did Appellant's behavior violate Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (m) discourteous treatment of the public or other staff, (o) willful disobedience, (p) misuse of State property, (r) violation of the prohibitions set forth in accordance with section 19990 (conflict of interest), and/or (t) other failure of good behavior on or off duty causing discredit to Appellant's employer or to Appellant?
3. If so, is dismissal the appropriate penalty for Appellant's misconduct?

### **FINDINGS OF FACT**

A preponderance of the evidence establishes the following:

1. On September 14, 1996, Respondent employed Appellant as Special Agent (SA) at the Bureau of Narcotics Enforcement's (BNE) Los Angeles Regional Office (LARO). As an SA, Appellant conducted investigations with other law enforcement agencies, gathered evidence, prepared written investigative reports, testified in court and before the grand jury, filed complaints with local

District Attorneys' Offices, made arrests, and trained other law enforcement personnel. Prior to Appellant's employment with Respondent, he was a police officer (PO) with the Newport PD (PD) for six years.

2. On January 1, 2001, Appellant promoted to SA Supervisor.
3. On February 1, 2005, Appellant promoted to SA In Charge (SAC) and managed the LA Interagency Metropolitan Police Apprehension Crime Task Force (IMPACT). IMPACT was comprised of representatives from up to 50 municipal police agencies. Appellant supervised as many as 100 individuals, which included sworn and other local city and county employees.
4. On July 31, 2009, Appellant promoted to Senior SA in Charge of BNE LARO. On November 11, 2009, Appellant transferred to the BNE Riverside Regional Office, which is one of the largest BNE regional offices. Appellant was responsible for multiple task forces and supervised 10 or more supervisors and managers. Appellant briefly managed the Orange County BNE office, as well.
5. Appellant's job performance has been outstanding and he has brought positive recognition to the DOJ related to drug and gang suppression programs. Respondent has not previously disciplined Appellant.

**Relationship with**

6. In June of 2006, Appellant began a consensual sexual relationship with LD ( LD ). At the time, Appellant was going through a divorce. However, throughout their relationship, Appellant led LD to believe that he was married to give her "incentive" to be quiet about their relationship.

worked as an Administrative Assistant and Financial Analyst at LA IMPACT from 1998 to 2008. Appellant supervised LD from 2005 until 2008. On March 20, 2008, LD left LA IMPACT and accepted a position with the Placentia Police Department. During their relationship, Appellant took over 100 sexually explicit photographs and made a video recording of LD that he kept on the hard drive of his personal computer. LD also took sexually explicit photographs of herself and emailed them to Appellant.

7. In October of 2007, rumors of Appellant's relationship with LD surfaced at work. Jaime Robinson (Robinson), Staff Assistant, told Eric Anderson (Anderson), then Deputy Director of LA IMPACT, that she had information about the intimate relationship between LD and Appellant. Anderson told Robinson to relay the information to Douglas B. Law (Law), Commander, Pasadena Police Department, who was the Deputy Director of LA IMPACT. Ultimately, Law told Chief Singer (Singer), Whittier Police Department, who then was the LA IMPACT Chairman of the Board, what Robinson told him about the relationship.
8. While having lunch at a restaurant, Jerry Hunter (Hunter), Assistant Chief, BNE, told Appellant about the rumors. Appellant denied that he was having an affair with LD and said, "Do you think I am crazy?" Hunter asked Appellant if he had an explanation as to why the rumors had surfaced. Appellant responded that they had, in fact, gone to dinner. At the end of the conversation, Hunter did not believe that Appellant was having a sexual relationship with

9. Appellant confronted LD about the rumors. LD told Appellant that she had revealed the relationship to several co-workers. Appellant was upset and told LD to tell the co-workers that they were not seeing each other and that she had embellished the extent of their relationship. Appellant also told to tell Law that she had made up or embellished their relationship. Appellant also said they would break up now that rumors had surfaced and that he would reveal sexually explicit photographs of LD by placing them on the internet or emailing them to her son if she did not recant her statements that she was having a relationship with Appellant.
10. Appellant went to Law's office and denied that he was having an affair with LD. Appellant also spoke to Robinson and told her that LD was "delusional and crazy," and that he was disappointed in Robinson for thinking that he and LD were having a sexual relationship.
11. The following Tuesday, LD went to speak with Law. She also denied that she was having a relationship with Appellant. Law was surprised that came to see him as he had instructed Robinson not to speak to anyone about the information she had shared with him. LD told Law that the reason she came to him was that she and Appellant had spoken on the weekend.
12. In the fall of 2007, LA IMPACT employees Rea Pfeiffer (Pfeiffer) and Christy Dorman (Dorman) had pending lawsuits naming Appellant as a respondent. Pfeiffer alleged that during a meeting, Appellant stated words to the effect that he, "wanted to kick her [Pfeiffer] in the cooch." Dorman's complaint was related to not being allowed to take breaks and that her work venue had

changed without proper notification. LD and Robinson were potential witnesses in each case. Attorneys for LA IMPACT conducted witness preparation sessions.

13. In April of 2008, Appellant and LD renewed their consensual sexual relationship. During the course of their relationship, Appellant would periodically "take breaks" from the relationship. Appellant told LD that he thought he was being investigated or followed. From January 2009 until October 2009, Appellant and LD spoke on the telephone, but did not see each other.

**Events on October 27, 2009**

14. On October 27, 2009, Appellant drove his State-issued car from the DRE office in Commerce, California, to LD 's residence in Brea which is east of Commerce. Appellant and LD had sex. Appellant was seated on the couch, picked up LD 's cellular telephone, saw a risqué text, and asked her "What's this?" LD asked Appellant to stop looking through the cellular telephone, but Appellant continued to scroll through messages and the address book on the phone. Appellant accused LD of sleeping with other men. LD tried to retrieve the telephone from Appellant, but Appellant held LD 's arm down to keep her from reaching the telephone as he held the phone in his other hand and continued to look at its contents. During the struggle for the telephone, LD ripped Appellant's shirt. Appellant then drove to Santa Maria for a task force meeting that began the following morning. Santa Maria is in Santa Barbara County, significantly north of

Commerce. By driving to Brea from Commerce to visit LD and then to Santa Maria rather than driving directly from Commerce to Santa Maria, Appellant added at least 50 miles to the trip.

15. On December 9, 2009, Appellant called LD while she was at work. LD became upset and decided to tell her supervisor, Placentia Chief of Police James Anderson, that Appellant had physically assaulted her on October 27, 2009, and in 2007, had threatened to release nude photographs of her if she did not recant a statement that she was having a sexual relationship with Appellant.
16. Chief of Police Anderson reported this conversation to DOJ Deputy Director Rick Lopes and to the Orange County District Attorney because he believed that Appellant had committed assault and battery specific to persons in a romantic relationship (domestic violence) and extortion causing another person to commit perjury.

**Telephone Conversation with LD on January 4, 2010**

17. On December 18, 2009, SA Gauthier (Gauthier) and SAC Nathan DaValle (DaValle) questioned LD. They asked LD whether she would be willing to surreptitiously record conversations between herself and Appellant as part of their investigation into allegations against Appellant. LD agreed. DaValle appointed SA Paul Stauts (Stauts) to conduct a criminal investigation of Appellant on behalf of the DOJ. LD made the recordings under the direction of SAC Paul Stauts. After each conversation, Stauts took

possession of the digital recorder, copied the recording, and returned the recorder to .

18. Appellant told LD about a fictitious informant in the Director's Office of the Division of Law Enforcement in Sacramento. The following exchange occurred during a recorded telephone conversation between LD and Appellant on January 4, 2010:

...  
LD : Are you – Is that lady still letting you know if anything comes up?

APPELLANT: Yeah.

LD : Jesus.

APPELLANT: Director's office.

LD : The director of what?

APPELLANT: The Division of Law Enforcement.

...  
LD : How – how do you – I'm afraid to even ask this. But how do you – how do you maintain such a good relationship with people to where they'll do that for you?

APPELLANT: I stuck my cock down her 70-year-old throat now and again.

LD : She's 70 years old?

APPELLANT: She's got to be damn close to it if not.

LD : Oh, Jesus.

APPELLANT: She reminds me – she reminds me of her son of something – I remind her of her son, her long-lost son.

Telephone Conversation with LD on January 20, 2010

19. In January 2010, the Board of the Parcel Interdiction Task Force (PACNET) was in the process of selecting an officer from the Placentia Police Department to fill a position on PACNET. PACNET is a small task force in Orange County investigating persons shipping drugs and money. The day-to-day operations of PACNET were run by a BNE supervisor who reported to Appellant.



20. In a recorded telephone conversation between LD and Appellant on January 20, 2010, in response to LD's question asking if Appellant would be flying out of Orange County Airport, Appellant responds that, "I only fly where the white people go. . . Yeah, white is right." Later in the conversation, and Appellant discuss the candidates for PACNET:

LD : Who do you want; the, the broad? Do you want Ruby or Rose?

APPELLANT: I don't know, I don't know who they want. I have to look into it.

LD : Ruby, uh, came out number one, I think, and, uh, I can't remember who the other person was?

APPELLANT: Did she have big titties?

LD : No, she doesn't have big titties.

In discussing a male candidate for the task force, Appellant asked, "Does he have a big cock?" Appellant asked LD these questions because she was close to Placentia Chief of Police Anderson and "thought she might have some information that wasn't being disclosed to his [Appellant's] supervisor."

LD also asked Appellant if Law had retired. Appellant responded that Law was a "negro" and a "negroid." Appellant also stated, "Italians are just dirty whiteys, that's all."

21. told her supervisor, Anderson, about Appellant's comments during the telephone conversation of January 20, 2010, regarding the PACNET candidates. After learning of Appellant's conversation with LD, Anderson was concerned about placing a female under Appellant's supervision on PACNET. Anderson has never spoken with Appellant.

22. Hunter instructed Appellant several times to contact Anderson regarding placement of one of the employees on the PACNET task force. Appellant failed to call Anderson. However, Appellant told Hunter that he left a message and that Anderson did not return his call.

Telephone Conversation on February 23, 2010

23. The following exchange occurred regarding the events of October 27, 2009, during a recorded telephone conversation between LD and Appellant on February 23, 2010:

LD : . . . remember when you came over and the last time, and – why did you look through my phone? What was that all about?

APPELLANT: I don't know. I don't remember. . .

LD : . . . I was trying to get it away from you and you – what the hell, you held me down. What the fuck. What kind of behavior is that? I don't want you doing that kind of shit anymore to me.

APPELLANT: Okay. . .

LD : Oh, please. How did – did I – did I rip that shirt of yours? I think I did. Didn't I?

APPELLANT: You did. . . Now, what kind of behavior is that?

LD : You were holding me down on the couch. I was trying –

APPELLANT: And why was I doing that?

: Because you thought that I was seeing somebody.

APPELLANT: And I was right, wasn't I? And you lied about. And you even lied about it when I had you caught. . . . So it sounds like I was pretty justified, doesn't it . . .

LD : But don't ever hold me down like that. That's not nice. You don't do that to people you care about. It's just –

APPELLANT: Well, true. True. True. And you don't do – you don't lie and push on people that you care about either.

LD and Appellant also discussed the photographs of LD :

LD : We've been – we've been lovers for a long time. And then I told the girls about us, and that created a mess and, you know –

APPELLANT: Yeah, that's true. Who fucked that one up.

LD : You – you – you coached me on what to say to Rick Law. But then you had those pictures that you were going to put on the Internet or whatever you were going to do with them, so – but all that is over with and –

APPELLANT: I don't know what you're talking about.

24. At the conclusion of the criminal investigation, Stauts shared his report with the Orange Co. DA. The DA informed Stauts that he would prefer to also have Appellant interviewed.
25. On March 9, 2010, the Superior Court of California, County of Orange, granted LD 's request for a Temporary Restraining Order (TRO), which ordered Appellant not to harass, contact, or locate LD and to stay at least 100 yards away from her, and her job, home and vehicle. Among other things, the TRO states that "... in the next several days, he will be placed on administrative leave and possibly face criminal charges pursuant to the investigation following my [ LD 's] complaint." On March 10, 2010, Stauts served the TRO on Appellant. Andy Durhan, Investigator, Orange County District Attorney's office, was present when Stauts served the TRO. Stauts attempted to speak with Appellant. Appellant stated words to the effect that he "would very much like to talk to him [Stauts] but would not do so without first getting an attorney."
26. Respondent placed Appellant on paid Administrative Time Off (ATO). Appellant was upset and angry and deleted photographs of LD from his computer. He did not delete photographs sent to him by LD after 2007.
27. Stauts prepared a supplemental report and turned the case into Michael Lubinski, Orange County District Attorney for criminal matters. An Assistant

District Attorney told Stauts that he was rejecting the case because there was insufficient evidence on dissuading a witness and not a serious enough case to warrant prosecution.

**Investigative Interview**

28. Allcia Fowler (Fowler), Senior Assistant Attorney General, and Barbara Seidman (Seidman), Supervising DAG, were asked to undertake an administrative investigation into whether Appellant violated statutory requirements of state employment. On April 5, 2010, Seidman and Fowler interviewed Appellant. Seidman admonished Appellant that he was required to answer questions truthfully. Specifically, Seidman stated that, "Your refusal to answer any question completely and accurately may be considered insubordination and could result in administrative discipline, up to and including termination."
29. Appellant was asked if he threatened to reveal sexually explicit photographs of LD to her son. Appellant responded, "No. I don't have any recollection of anything like that." Appellant was asked if he threatened to put the photographs on the internet. Appellant responded, "No. I don't think I did."
30. As to the skirmish on October 27, 2009, Appellant denied holding Drylle down while she was trying to get her cellular telephone. Appellant explained:

I extended my left arm with the cell phone trying to read it, and I'm holding it with my right and she's climbing on me and – you know, at first it was playful. But then she started getting mad. . . I gave her the cell phone. . . I would characterize it as me holding it [cellular telephone] at bay, her climbing on me, me trying to hold the phone away while – while reading it. . . Well, I mean, again, if

you say physically restrained by holding her back, yeah, I guess I did. You know, it's all how you want to characterize it.

Appellant also denied saying anything to LD about being stronger than she was and that it was not worth it for her to fight him.

31. Appellant described the following exchange that occurred during lunch with Hunter, his supervisor:

... he [Hunter] said the rumor mill is -- the rumor is that you're -- having an affair with LD . And I said, well, I'm not. Because I wasn't.

Appellant was asked whether anybody at LA IMPACT ever asked if he was having an affair or relationship of a sexual nature with LD . Appellant responded that he told Anderson, Law, and maybe Daren Kasten, a captain from Palos Verdes, that he was not having an affair with LD . Appellant also stated that he told LD , "Look, if you get asked by anybody, you know ... If any of the ones [girlfriends] you did talk to hit you up, the bottom line is we're not seeing each other, you know. Because we're not."

32. Appellant was asked about the discussion with LD about the Placentia Police Department members that interviewed for PACNET. Appellant stated that he did not recall discussing the size of the female candidate's breasts or the male candidate's penis. Appellant denied specific recollections of the conversation. However, Appellant stated the following:

... I thought it was unusual that Al Roth and the Placentia sergeant had picked the female officer and then they said, no, we're going to go with this other guy, and Al had did background on that other guy and something was wrong. So that didn't sit right with me. So it was a way for me to kind of get some background, you know, to figure out, you know, what's wrong with this guy, what's wrong with

this girl, why are they going with this guy. So I kind of just, you know – I guess investigative curiosity. I wanted to find out why this – there may be a problem. Maybe she knew something, maybe she heard something at work.

33. As to the reason for deleting photographs and the videotape of in March of 2010, Appellant stated that:

I obviously knew that I got put on administrative time off, and when I saw the restraining order, you know, it went bad with her. And I have – I figured, you know, at some point I'm going to be asked about them. You know, sort of the same thing, I just – I wanted it to be not in my – not under my control at that point. You know, I wanted to be rid of it. Plus, I was angry. . .

**DOJ Policies and Procedures**

34. On July 8, 2005, and November 21, 2008, Appellant signed that he received a copy of the DOJ Incompatibility statement, which provides that under the provisions of Government Code section 19990, the following are inconsistent, incompatible, or in conflict with the duties of its officers and employees:

1. Using the prestige or influence of an officer or employment in the DOJ . . .
2. Using time, facilities, equipment or supplies of the DOJ
3. Using confidential information acquired by virtue of employment by the DOJ for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
4. Divulging confidential information, data, or records of the DOJ to any person to whom issuance of such information, data, or records has not been authorized . . .

35. On August 15, 2009, Appellant signed a certification that he completed a course on discrimination, harassment, and retaliation prevention, and that he participated in a discussion regarding the supervisor's role, rights, and responsibilities.

**CREDIBILITY DETERMINATION**

testified that Appellant threatened to expose sexually explicit photographs of her if she did not deny that she was involved in a sexual relationship with Appellant. Appellant denied LD's allegation. Because the testimony is contradictory, a credibility determination must be made.<sup>2</sup>

Appellant was adamant that he wanted to keep his relationship with LD secret and was angry when he learned that LD had told her co-workers about it. Appellant admitted multiple times during his testimony and in his investigative interview that he took steps to keep LD from revealing their relationship. He lied about his marital status, made up a confidential informant in the Director's Office, and told her that he was being investigated. Clearly, Appellant coerced LD into keeping their relationship secret. Given Appellant's efforts to keep LD quiet, her testimony that he threatened her is consistent with his behavior. He was having a sexual relationship with a subordinate employee, he was being sued by another subordinate for sexual harassment, and LD was a potential witness in the case. For all of the reasons above, LD's testimony is credited over Appellant's testimony.

As to the allegation that Appellant physically assaulted LD, LD testified that Appellant pinned her arm down on her couch while he scrolled through her cell phone texts, e-mails, and address book. Appellant denied that he held LD's arm down.

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<sup>2</sup> Evidence Code section 780 provides, in pertinent part: "Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

- ...  
(f) The existence or nonexistence of a bias, interest, or other motive.
- (g) A statement previously made by him that is consistent with his testimony at the hearing.
- (h) A statement made by him that is inconsistent with any part of his testimony at the hearing . . . "

Appellant testified that he "basically was trying to keep her off him and pushed her away." Appellant also testified that he did "not necessarily" recall holding her arm down." Rather, he "held her arm away from him." Although, when questioned, Appellant admitted that determining whether he had assaulted LD was all in how one characterized his actions.

It is undisputed that LD told Appellant to stop, yet Appellant continued to scroll through her telephone. Appellant also admittedly used force to keep LD away from the telephone. Appellant's testimony that he was upset because she was potentially seeing other men substantiates Drylle's testimony regarding Appellant's angry demeanor during the scuffle. During a recorded conversation, when LD raised Appellant's holding her down, Appellant never denies that he held LD down. Appellant testified that his comment to LD on the telephone regarding the incident was "taken out of context" and that he made the comment in a "rhetorical" manner. Appellant's explanation is not believed. Additionally, Appellant has substantial motivation to minimize his behavior as he faces losing his job and career. For the above reasons, LD's testimony is credited over Appellant's.

#### PRINCIPLES OF LAW AND ANALYSIS

In a disciplinary appeal, the appointing power must prove the charges against the employee by a preponderance of the evidence. (Evid. Code, § 115; *Lyle Q. Guldry* (1995) SPB Dec. No. 95-09.) "Preponderance of the evidence" is usually defined in terms of 'probability of truth'. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482-483; Evid. Code, § 115.)

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**Inexcusable Neglect of Duty**

Inexcusable neglect of duty under Government Code section 19572, subdivision (d), is the intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty. (*Gayle McCormick* (2003) SPB Dec. No. 03-06; *Robert Herndon* (1994) SPB Dec. No. 94-07.) In *Errol L. Dunnigan* (1993) SPB Dec. No. 93-31, the Board set forth the criteria for determining whether an employee should be held responsible for violating policy. The Board concluded that (1) there must be a clear policy, (2) the employee must have notice of such a policy, and (3) the department must intend to enforce that policy.

As a high level manager, Appellant had a duty to uphold Respondent's policies regarding sexual harassment and discrimination. Instead, Appellant made derogatory statements regarding women and minorities and communicated those views to an employee of another police agency.

Upon service of the TRO, Appellant was aware that he was under criminal investigation regarding his actions with LD and that the photographs of LD may be used as evidence in a criminal manner. As a peace officer since 1996, and involved with collecting and securing evidence from drug and other crime scenes, Appellant was well aware of the need to preserve evidence. He did not. Rather, Appellant intentionally deleted photographs of LD that could potentially implicate him. Also, Appellant was informed of his duty to be truthful during his investigative interview. He was not.

Accordingly, the charge of inexcusable neglect of duty pursuant to Government Code section 19572, subdivision (d), is sustained.

**Dishonesty**

Dishonesty under Government Code section 19572, subdivision (f) requires a showing of intentional misrepresentation of known facts, or a willful omission of pertinent facts, or a disposition to lie, cheat, or defraud. (*Nhut Minh Nguyen* (1999) SPB Dec. No. 99-01; *Eliette Sandoval* (1995) SPB Dec. No. 95-15.)

At hearing, Appellant admitted that he made up a fictitious 70-year old confidential informant in the Director's Office. Appellant also was dishonest during his investigative interview when he denied holding LD down on the couch, denied telling that he had engaged in sex with the fictitious informant, and denied making comments about the breast and penis sizes of Placentia Police Department task force candidates. Appellant consistently denied his relationship with LD. Appellant was not truthful with Hunter when he claimed to have called the Placentia Police Chief.

Accordingly the charge of dishonesty under Government Code section 19572, subdivision (f), is sustained.

**Discourteous Treatment**

Discourteous treatment of the public or other employees under Government Code section 19572, subdivision (m) involves conduct where a person displays hostility towards others, speaks in an abrasive tone of voice, and has a brusque demeanor. (*Walker v. State Personnel Board* (1971) 16 Cal.App.3d 550; *Gayle McCormick* (2003) SPB Dec. No. 03-06.)

Appellant was hostile and threatening to LD. Appellant's behavior constitutes discourteous treatment pursuant to Government Code section 19572, subdivision (m).

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**Willful Disobedience**

Willful disobedience under Government Code section 19572, subdivision (o) is found where an employee knowingly or intentionally violates a direct command or prohibition. (*Ethel Warren* (1999) SPB Dec. No. 99-09; *Richard J. Hildreth* (1993) SPB Dec. No. 93-22.)

Respondent did not substantiate by a preponderance of the evidence or argue in its closing brief that Appellant's conduct constituted willful disobedience. The charge of willful disobedience under Government Code section 19572, subdivision (o), is stricken.

**Misuse of State Property**

Misuse of state property under Government Code section 19572, subdivision (p) is established in those situations where state property is stolen or is intentionally used for an improper or non-state purpose, often, but not always, for personal gain. (*Nhut Minh Nguyen* (1999) SPB Dec. No. 99-01.) Misuse of state property may also connote improper or incorrect use, or mistreatment or abuse, of state property. (*Robert Boobar* (1993) SPB Dec. No. 93-21.)

Appellant drove his state-issued car to LD's house in Brea from the Commerce Office. LD's home is east of Los Angeles and was not on the way to Santa Maria.

Appellant used his state car for non-state purposes and for his personal gain, to visit LD. Accordingly, Appellant misused his state-issued car and the charge under Government Code section 19572, subdivision (p) is sustained.

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**Violation of Section 19990**

Violation of section 19990 under Government Code section 19572, subdivision (r) provides that an employee may be disciplined for violating the prohibitions against incompatible activities set forth in Government Code section 19990. Section 19990 provides that a state employee shall not engage in any activity that is inconsistent, incompatible, in conflict with, or inimical to, his or her job duties. It also grants each appointing power the right to determine which employee activities are incompatible with state employment. (Gov. Code, § 19990.) The employer, however, is required to give notice to an employee of the prohibited behavior before discipline may be imposed. (Jeffrey Crovitz (1996) SPB Dec. No. 96-19.)

Respondent did not substantiate by a preponderance of the evidence or argue in its closing brief that Appellant's conduct violated section 19990 under Government Code section 19572, subdivision (r). Accordingly, this charge is stricken.

**Other Failure of Good Behavior**

Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment under Government Code section 19572, subdivision (t) can only be found where appellant has engaged in an intentional or grossly negligent act of misconduct. (Irven Martin McMillan (1994) SPB Dec. No. 94-12.) The misconduct must be of such a nature as to reflect upon the employee's job. (Ralph Rey (1999) SPB Dec. No. 99-10.) In other words, [1] the "misconduct must bear some rational relationship to [the employee's] employment and [2] must be of such character that it can easily result in

the impairment or disruption of the public service." (*Dennie L. Melton* (1995) SPB Dec. No. 95-10, citing *Yancey v. SPB* (1985) 167 Cal.App.3d 478, 483.)

The SPB has held that a peace officer may be disciplined for physical abuse he/she inflicts on another while off duty. In *John Hughes* (2003), SPB Dec. 03-05, a Correctional Officer grabbed his wife's arm in an angry manner after finding reason to suspect she was having an affair. (See also *Randolph Luna* (1998) SPB Dec. No. 98-08.)

Here, Appellant held LD's arm down out of anger while he scrolled through her cellular telephone after viewing a risqué text. Appellant's behavior was remarkably similar to the behavior of peace officers Hughes and Luna. Consistent with the SPB's findings in those cases, Appellant's behavior constitutes failure of good behavior.

Moreover, Appellant made racially insensitive statements about an African American Deputy Director, made racist statements that "white is right," and demeaned candidates for a task force position by discussing their "titties" and penis with an employee of the candidates' agency. Appellant was a high-level manager dealing with diverse individuals on multi-agency task forces.

It is unnecessary that the public have actual knowledge of the misconduct. (*Nightingale v. State Personnel Board* (1972) 7 Cal.3d 507, 513-514.) Rather, "It is enough that, should the misconduct become known, it would discredit his agency or his employment." (*Mark R. Masai* (1995) SPB Dec. No. 95-01, p. 9.) Appellant's statements regarding law enforcement personnel from other agencies reflects negatively on Appellant and undermines the reputation of Respondent. Appellant's

behavior constitutes failure of good behavior as does using misusing his state-issued car.

Accordingly, the charge of other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment under Government Code section 19572, subdivision (t) is sustained.

### **PENALTY**

#### **Penalty**

The Court in *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 217-218, identified the factors to be considered by the SPB in determination of penalty:

... [W]e note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in [h]arm to the public service. (Citation.) Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.

A peace officer's job is a position of trust and the public has a right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Appellant was a peace officer in a high level management position who failed to act with integrity and honesty. "Honesty, credibility and temperament are crucial to the proper performance of an officer's duties. Dishonesty is incompatible with the public trust." (*Talmo v. Civil Service Commission* (1991) 231 Cal.App.3d 210.) Dishonesty is not an isolated act; it is more a continuing trait of character. (*Paulino v. Civil Service Com.* (1985) 175 Cal.App.3d 962, 972.) Appellant has shown disregard for the truth in his personal and professional life. Appellant breached the public's trust by failing to honestly respond to questions during his investigative interview, in

communicating with his supervisor, and with LD Appellant's tale of an internal confidant resulted in Respondent undertaking an investigation to ascertain whether there was, in fact, someone in the Director's Office who was providing confidential information to Appellant. Respondent could have been harmed if the public or someone from another law enforcement agency lost trust in the DOJ because of Appellant's dishonesty about his alleged confidant. Because of the special position of trust peace officers hold, dishonesty by peace officers warrants harsh punishment. (*Anderson v. State Personnel Bd.* (1987) 194 Cal.App.3d 761.)

Discourtesy by a supervisor towards an inferior employee also warrants harsher punishment because the inferior employee may reasonably feel too intimidated to respond. (*Walker v. State Personnel Bd.*, *supra*, 16 Cal.App.3d at p. 553.) As a supervisor, Appellant was expected to set a proper example and ensure that his employees conduct themselves appropriately. Instead, Appellant's conduct implied that destroying potential evidence, intimidating another employee, making up a confidential informant and investigations for one's own benefit, and expressing racial and sexist views contrary to DOJ policies, were condoned. Appellant set an extremely poor example.

Appellant also committed other misconduct that harmed the public service. In particular, Appellant's derogatory and racial comments were contrary to DOJ policies and placed the DOJ in a poor light with allied agencies.

Appellant offered excuses for all of his failures. The only remorse Appellant expressed was that he opened his hotel room door to LD in 2006 and engaged in sex

with her. Both strongly suggest a significant likelihood of recurrence and weigh in favor of a substantial penalty. (*Robert R. Watson* (1994) SPB Dec. No. 94-10.)

Appellant's long-term employment and work performance potentially weigh in favor of a lesser penalty. However, considering Appellant's position, Appellant's propensity to be dishonest, as well as his failure to take any responsibility for his conduct, the penalty of dismissal is just and proper.

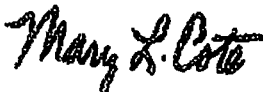
**CONCLUSIONS OF LAW**

1. Appellant's conduct constitutes cause for discipline under Government Code section 19572 subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (m) discourteous treatment of the public or other staff, (p) misuse of State property, and (t) other failure of good behavior on or off duty causing discredit to Appellant's employer or to Appellant.
2. Appellant's conduct does not constitute (o) willful disobedience and (r) violation of the prohibitions set forth in accordance with section 19990 (conflict of interest).
3. The appropriate penalty is dismissal.

**ORDER**

Respondent's Dismissal of William Telish is **SUSTAINED**.

DATED: August 25, 2011



---

Mary L. Cote  
Administrative Law Judge  
State Personnel Board



# DECLARATION OF MAILING

## APPELLANT COPY

In the Matter of the Appeal by: **William Telish**

**Case No. 10-3353A**

**Appellant:**

William Telish  


**Appellant's Representative:**

Lackie, Dammeier & McGill - APC  
367 N. Second Avenue  
Upland, CA 91786-6006  
Attn: Kasey Castillo

**Personnel Officer:**

Justice - Attorney General - HR/Personnel  
1300 I Street, Rm. 125  
Sacramento, CA 95814

**Legal Office:**

Justice - Attorney General - Sac-Legal  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Attn: Chris Knudsen

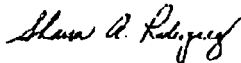
**(See Attached Documents)**

I, the undersigned, say and declare that at all times herein mentioned I was a citizen of the United States, over the age of eighteen years, and not a party to the above entitled proceeding; that I was employed in the County of Sacramento, State of California, and that my business address was 801 Capitol Mall, Sacramento, California. On the date shown below, I served the attached **BOARD DECISION** on each of the State agencies and persons hereinafter specified by placing true copies thereof in separate envelopes respectively addressed to said State agencies and persons named herein.

Said addresses were the last known addresses of specified agencies and persons. Each envelope was then sealed and deposited in the United States mail, at Sacramento, California, with postage thereon fully prepaid. On said date there was delivery service by United States mail at each of the places so addressed or there was regular communication by United States mail between said place of mailing and each of the places so addressed.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2012 at Sacramento, California.



Sharon Rodriguez

Cc:

00003659

[FROM ADMINISTRATIVE RECORD  
SUBMITTED TO SUPERIOR COURT]

AG0000107

# DECLARATION OF MAILING

## APPELLANT REPRESENTATIVE COPY

In the Matter of the Appeal by: William Telish

Case No. 10-3353A

**Appellant's Representative:**

Lackie, Dammeier & McGill - APC  
367 N. Second Avenue  
Upland, CA 91786-6006  
Attn: Kasey Castillo

**Appellant:**

William Telish  


**Personnel Officer:**

Justice - Attorney General - HR/Personnel  
1300 I Street, Rm. 125  
Sacramento, CA 95814

**Legal Office:**

Justice - Attorney General - Sac-Legal  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Attn: Chris Knudsen

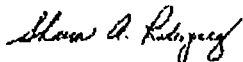
**(See Attached Documents)**

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I declare under the penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2012 at Sacramento, California.



Sharon Rodriguez

Cc:

00003660

[FROM ADMINISTRATIVE RECORD  
SUBMITTED TO SUPERIOR COURT]

AG0000108

# DECLARATION OF MAILING

## DEPARTMENT COPY

In the Matter of the Appeal by: William Telish

Case No. 10-3353A

**Personnel Officer:**

Justice - Attorney General - HR/Personnel  
1300 I Street, Rm. 125  
Sacramento, CA 95814

**Legal Office:**

Justice - Attorney General - Sac-Legal  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Attn: Chris Knudsen

**Appellant:**

William Telish  


**Appellant's Representative:**

Lackie, Dammeier & McGill - APC  
367 N. Second Avenue  
Upland, CA 91786-6006  
Attn: Kasey Castillo

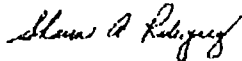
**(See Attached Documents)**

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I declare under the penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2012 at Sacramento, California.



Sharon Rodriguez

Cc:

00003661

[FROM ADMINISTRATIVE RECORD  
SUBMITTED TO SUPERIOR COURT]

AG0000109

# DECLARATION OF MAILING

## DEPARTMENT REPRESENTATIVE COPY

In the Matter of the Appeal by: William Telish

Case No. 10-3353A

**Legal Office:**

Justice - Attorney General - Sac-Legal  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Attn: Chris Knudsen

**Personnel Officer:**

Justice - Attorney General - HR/Personnel  
1300 I Street, Rm. 125  
Sacramento, CA 95814

**Appellant:**

William Telish  


**Appellant's Representative:**

Lackie, Dammeier & McGill - APC  
367 N. Second Avenue  
Upland, CA 91786-6006  
Attn: Kasey Castillo

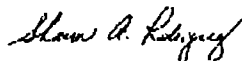
**(See Attached Documents)**

I, the undersigned, say and declare that at all times herein mentioned I was a citizen of the United States, over the age of eighteen years, and not a party to the above entitled proceeding; that I was employed in the County of Sacramento, State of California, and that my business address was 801 Capitol Mall, Sacramento, California. On the date shown below, I served the attached **BOARD DECISION** on each of the State agencies and persons hereinafter specified by placing true copies thereof in separate envelopes respectively addressed to said State agencies and persons named herein.

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I declare under the penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2012 at Sacramento, California.



Sharon Rodriguez

Cc:

00003662

[FROM ADMINSTRATIVE RECORD  
SUBMITTED TO SUPERIOR COURT]

AG0000110

# DECLARATION OF MAILING

## FILE COPY

In the Matter of the Appeal by: William Telish

Case No. 10-3353A

**Appellant:**  
William Telish  


**Appellant's Representative:**  
Lackie, Dammeler & McGill - APC  
367 N. Second Avenue  
Upland, CA 91786-6006  
Attn: Kasey Castillo

**Personnel Officer:**  
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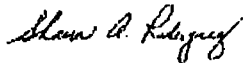
### (See Attached Documents)

I, the undersigned, say and declare that at all times herein mentioned I was a citizen of the United States, over the age of eighteen years, and not a party to the above entitled proceeding; that I was employed in the County of Sacramento, State of California, and that my business address was 801 Capitol Mall, Sacramento, California. On the date shown below, I served the attached **BOARD DECISION** on each of the State agencies and persons hereinafter specified by placing true copies thereof in separate envelopes respectively addressed to said State agencies and persons named herein.

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I declare under the penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2012 at Sacramento, California.



Sharon Rodriguez

Cc:

00003663

[FROM ADMINISTRATIVE RECORD  
SUBMITTED TO SUPERIOR COURT]

AG0000111

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE DIRECTOR

INVESTIGATION REPORT

Investigation Title: William Telish, Senior Special Agent in Charge	Date: May 6, 2010	Investigation No.:
Report Number: 1	Type of Report: Opening/Closing	Case X-Ref:
Investigator: Barbara Seidman, SDAG	Investigator: Alicia Fowler, SAAG	

INTRODUCTION

Subject of Investigation

William Thomas Telish

Senior Special Agent in Charge  
Bureau of Narcotics Enforcement  
Riverside Regional Office  
California Department of Justice  
829 Marlborough Avenue  
Riverside, CA 92507  
[REDACTED]

William Thomas Telish has been employed by the California Department of Justice (CA DOJ) since September 1996. Telish has been a Senior Special Agent in Charge (SAIC) in charge of the Riverside Regional Office since August 2009. From February 2005 until August 2009 he was a Special Agent in Charge. In approximately September 2004, Telish was made the Director of LA IMPACT, which is a major crime task force made up of approximately 48 regional law enforcement agencies including BNE and federal agencies.

DESCRIPTION OF THE INVESTIGATION

On March 4, 2010, Division of Law Enforcement (DLE) Director George Anderson sent a letter, directing the Employment, Regulation and Administration Section of the Office of the Attorney General to conduct an administrative investigation into allegations of misconduct against Senior

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

Special Agent in Charge William Thomas Telish.<sup>1</sup> Telish is assigned to the BNE Riverside Regional Office. The allegations against Telish stemmed from telephone contact by the Chief of Police of Placentia, California to Deputy Director Lopes. In that telephone call, Chief James Anderson indicated that one of his employees, \_\_\_\_\_ LD \_\_\_\_\_, was recently physically assaulted by Telish \_\_\_\_\_

Based on a review of the above information, the allegations against Telish consisted of the following:

- Forcibly and physically holding down that same individual while Telish looked through information contained on her cellular phone without her permission:

his former

Any state employee who engages in this conduct would be in violation of CA Government Code (CGC) Section 19572, subsections:

(d) Inexcusable Neglect of Duty

(m) Discourteous treatment of the public or other employees

<sup>1</sup> Additionally, DLE Deputy Director Richard Lopes verbally asked that the investigation be conducted by ERA on March 8, 2010. The letter officially requesting the investigation was not received by ERA until March 16, 2010.



STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

- (t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment

This report documents interviews with the subject and witnesses, and a review of relevant documents, including transcriptions of the recorded telephone conversations between Telish and . This investigation was completed on May 5, 2010.

List of Witnesses



STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.



ALLEGATIONS

Allegation number 1:



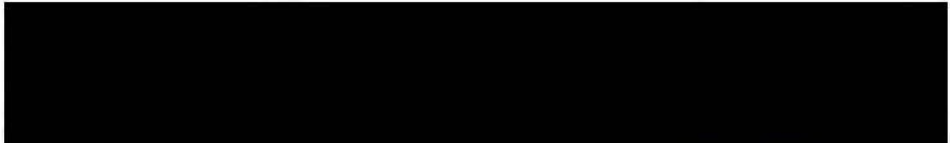
Allegation number 2:



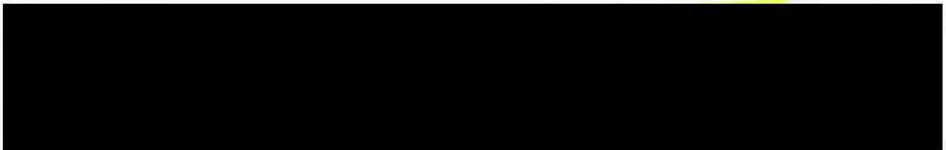
Allegation number 3:



Allegation number 4:



Allegation number 5:



Allegation number 6: Did Telish assault LD at her home in October 2009 by forcibly holding her down while he searched her cellular phone without her permission?  
[Violation of CGC Section 19572, subsections (m) and (t)]

Allegation number 7:



STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish Invest. No. [REDACTED]

Allegation number 8: [REDACTED]

Allegation number 9: [REDACTED]

FACTUAL BACKGROUND

William Thomas Telish has been employed by the California Department of Justice (CA DOJ) since September 1996. Telish has been a Senior Special Agent in Charge (SAIC) in charge of the Riverside Regional Office since August 2009. From February 2005 until August 2009 he was a Special Agent in Charge. In approximately September 2004, Telish was made the Director of LA IMPACT, which is a major crime task force made up of approximately 48 regional law enforcement agencies including BNE and federal agencies. Telish's personnel records show that Telish has worked for the DOJ for over 13 years. Although Telish's performance evaluations are not current, past performance evaluations from the 2001 timeframe show Telish as an outstanding employee. There was no indication of prior discipline in the personnel file.

In December 2009, the Chief of Police of Placentia, California contacted Deputy Director Lopes by telephone. In that telephone call, Chief Anderson indicated that one of his employees,

LD was recently physically assaulted by Telish and that Telish had used sexually explicit photos he had of LD to force her to deny that he and she were having an affair in 2007. Following that telephone call from Chief Anderson, Professional Standards Group Special Agent in Charge Nathan DaValle and Special Agent Supervisor Catherine Gautier interviewed [REDACTED]

[REDACTED] Additionally, a criminal investigation into the allegations regarding Telish was opened in December 2009. [REDACTED]

[REDACTED] Based on a review of the above information, the allegations against Telish consisted of the following:

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish Invest. No. \_\_\_\_\_

[REDACTED]

- Forcibly and physically holding down that same individual while Telish looked through information contained on her cellular phone without her permission;

[REDACTED]

CHRONOLOGY OF EVENTS

December 17, 2009 DLE Deputy Director Lopes received a telephone call from Placentia, California Chief of Police James Anderson indicating that Telish had recently assaulted Anderson's employee. LD [REDACTED]

December 18, 2009

[REDACTED]

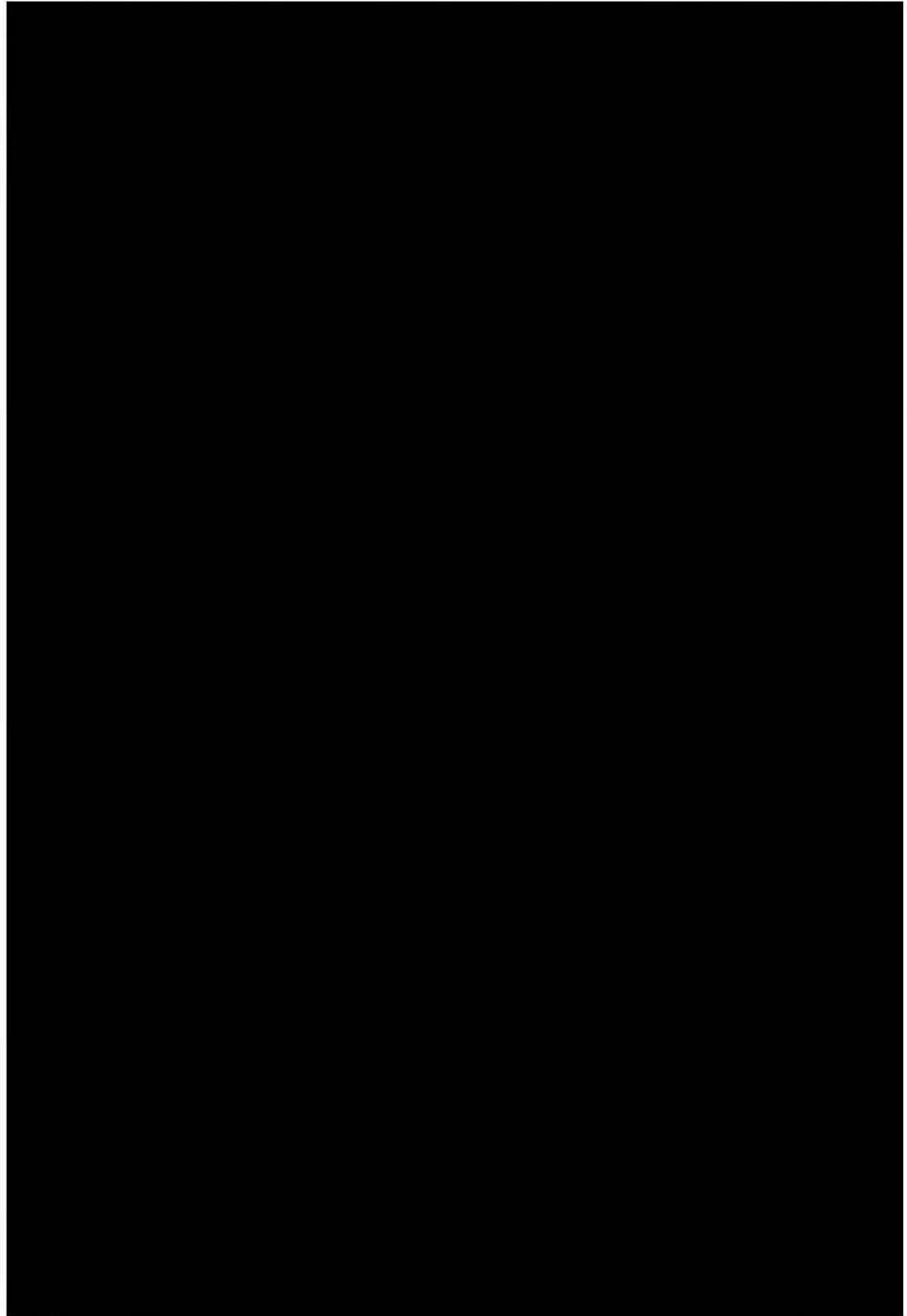


STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_



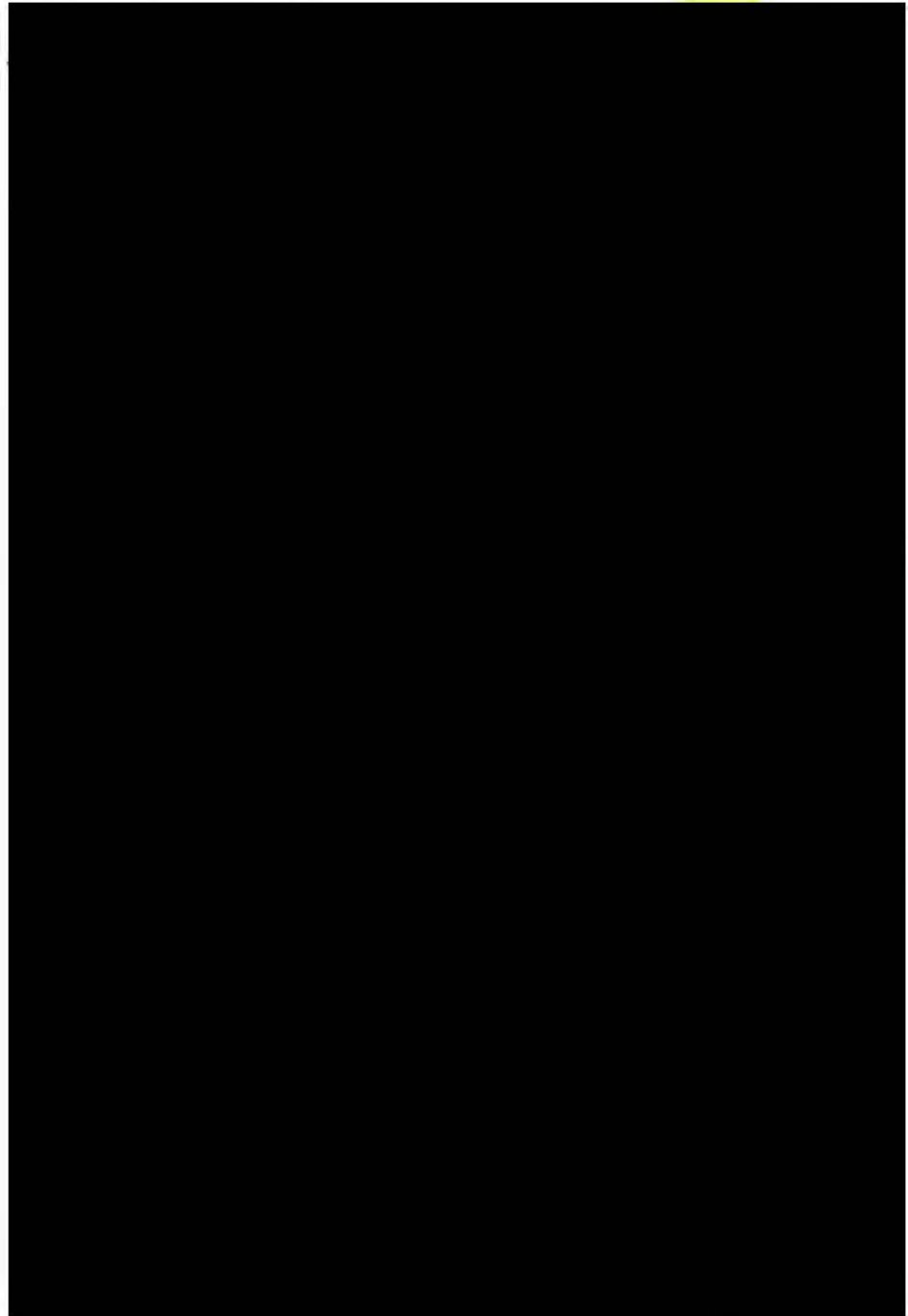


STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.

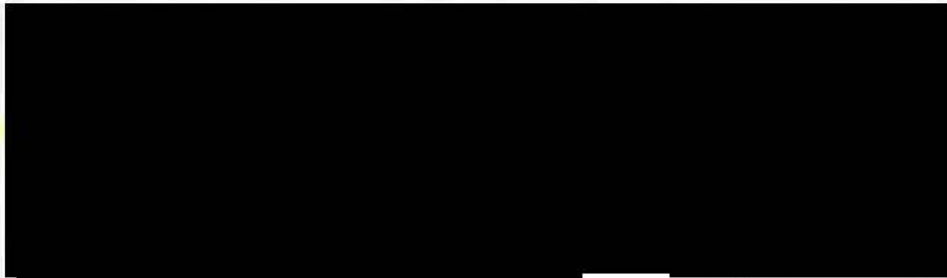


STATE OF CALIFORNIA  
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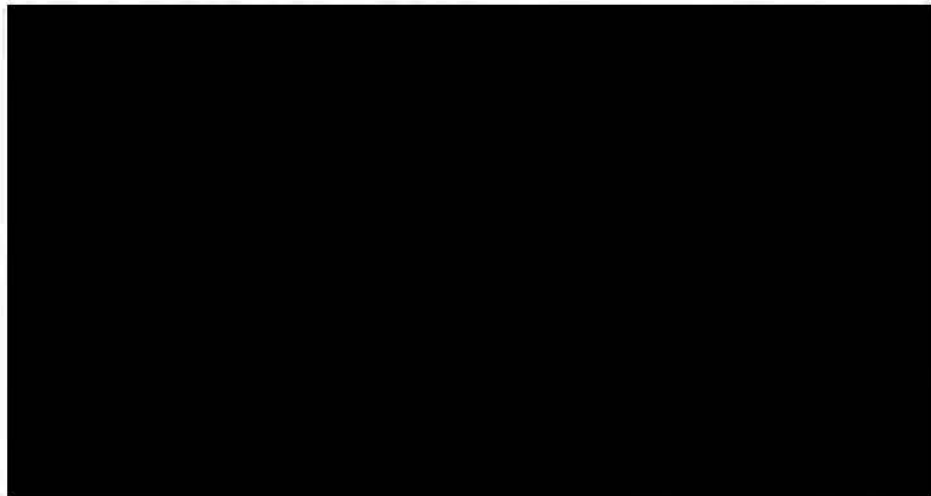
INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_



LD stated that afterward they had a physical struggle over her cellular phone. Telish had picked it up and was looking through her text messages and call log and she tried to take the phone away from him. (page 34) He made a remark like "I caught you" because "I think you're dating, I think you're seeing other people. I said, well Wil, I think I can. And he's - he got very angry." (page 43) Telish physically restrained her by holding her down on the sofa with one arm, while continuing to look at the cell phone with the other. (page 34-35) Telish told LD to stop fighting him, that he was stronger than she was. (page 35) She indicated "I said stop - you know, I said what are you doing. He says just let me look through this, let me look through this. And . . . But I kept, you know, preventing him from doing that until he finally say I'm stronger than you. I ripped his sleeve. He says just let me look through it. And I gave up. I says, go ahead, look through it." (page 44) When asked about any injuries she said "he held my - my arm down, and my wrist was a little bit sore, a little sore, because he held me down for a while." (page 43)





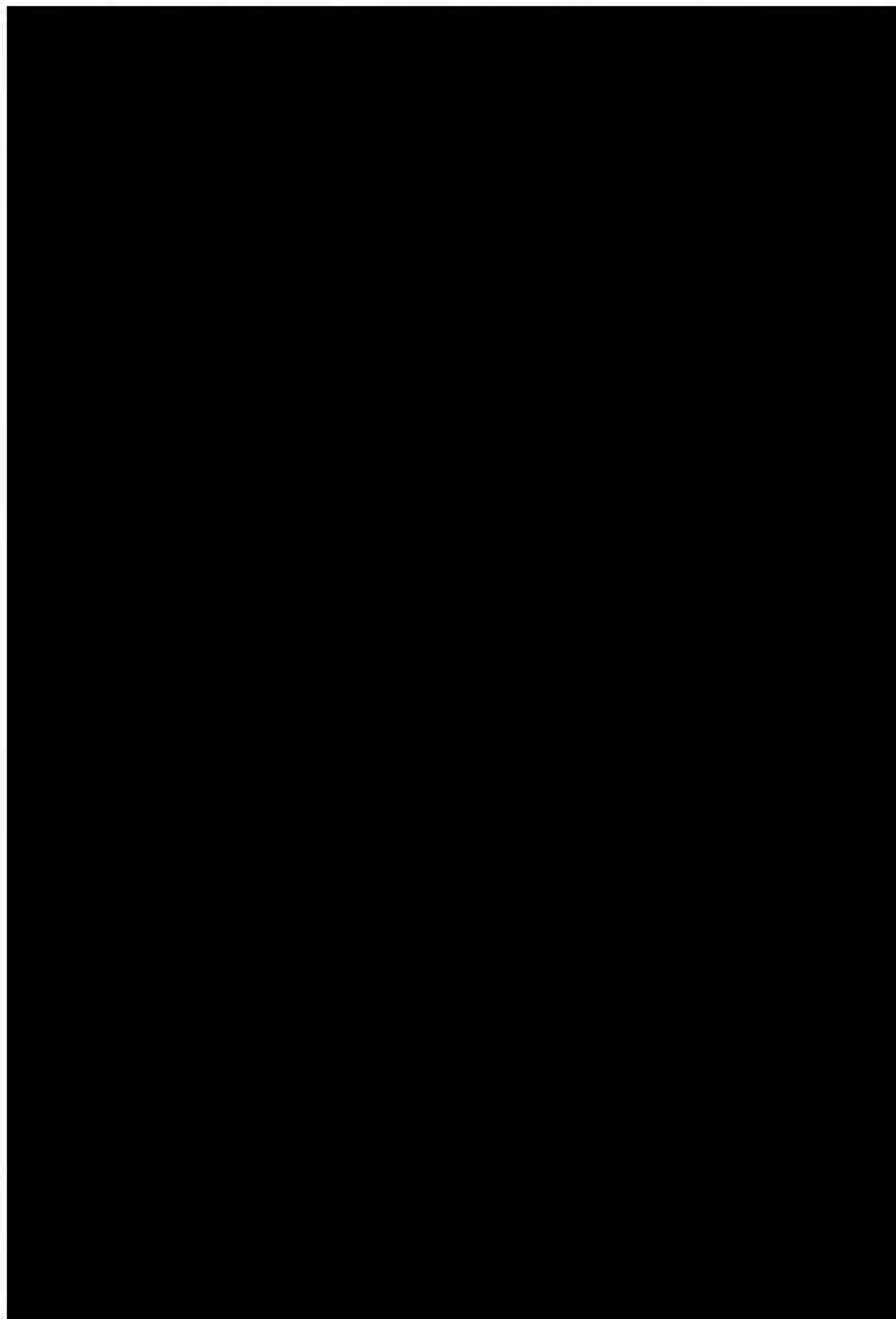


STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_





STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish Invest. No. \_\_\_\_\_

admit that, you know, he was -he forced me to perjure myself - I want him to go down." (page 83) LD Interview, Attachment 1)

December 21, 2009

DLE Director Anderson determined that a criminal investigation would be conducted and SAS Paul Stauts was assigned to conduct the criminal investigation.



January 4, 2010



January 7, 2010

January 20, 2010

January 27, 2010



STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

February 8, 2010

February 9, 2010

February 23, 2010

[REDACTED]

Then Telish and LD discuss the October 27, 2009 incident with her cellular phone. LD says in the call "I was trying to get it away from you and you - - what the hell, you held me down. What the fuck. What kind of behavior is that? I don't want you doing that kind of shit anymore to me." And Telish responded "okay." Telish then goes on to say "Well okay, then you need to stop bullshitting me and lying, and you'll be trusted." Then LD goes on to say: "Well, you tell me that - - to stop fighting with you. Remember? You said that you'll let go of me if I tell you what's going on. So I did, right?" And Telish responds "Right. And I had to do that, didn't I?" Later Telish states "You're just mad because you got caught, that's all. You got caught, and you're mad about it. And you're - and you're worried that I may catch you again, that's why you're bringing this up."

LD goes on to describe the situation as "you were holding me down on the couch. I was trying - -" and Telish interrupts to say "And why was I doing that?" and indicates that it sounds like he "was pretty justified, doesn't it?" (pages 8-13)

[REDACTED]

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

March 8, 2010

[REDACTED]  
Deputy Director Rick Lopes contacted ERA asking that the Section conduct an administrative investigation of Telish.

March 10, 2010

Special Agent Supervisor Paul Stauts met with Orange County District Attorney's Office and delivered DLE's criminal investigation report. (Investigation Report, Attachment 9.)  
[REDACTED]

March 11, 2010

March 12, 2010

March 16, 2010

March 17, 2010

March 19, 2010

March 25, 2010

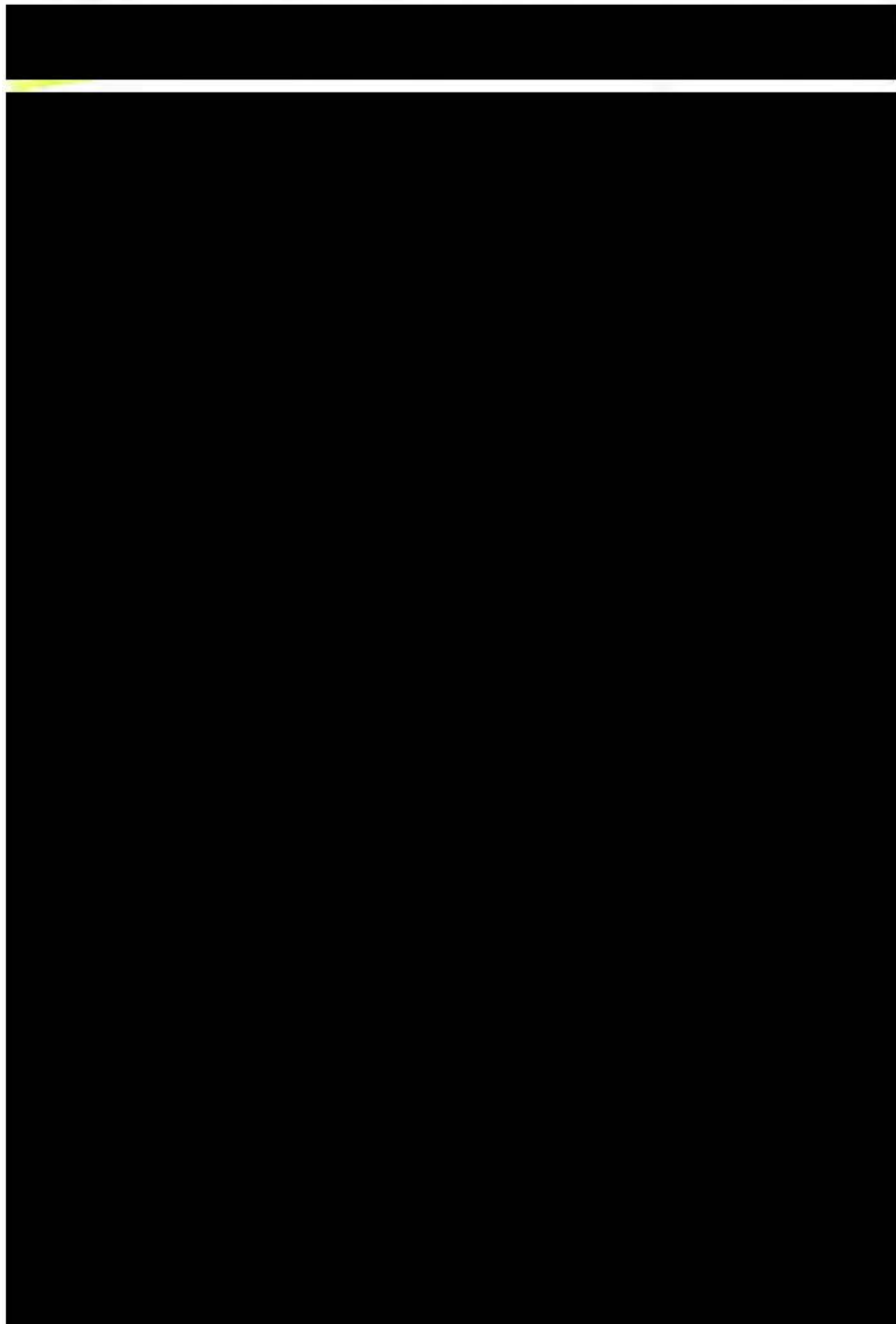
March 29, 2010

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_



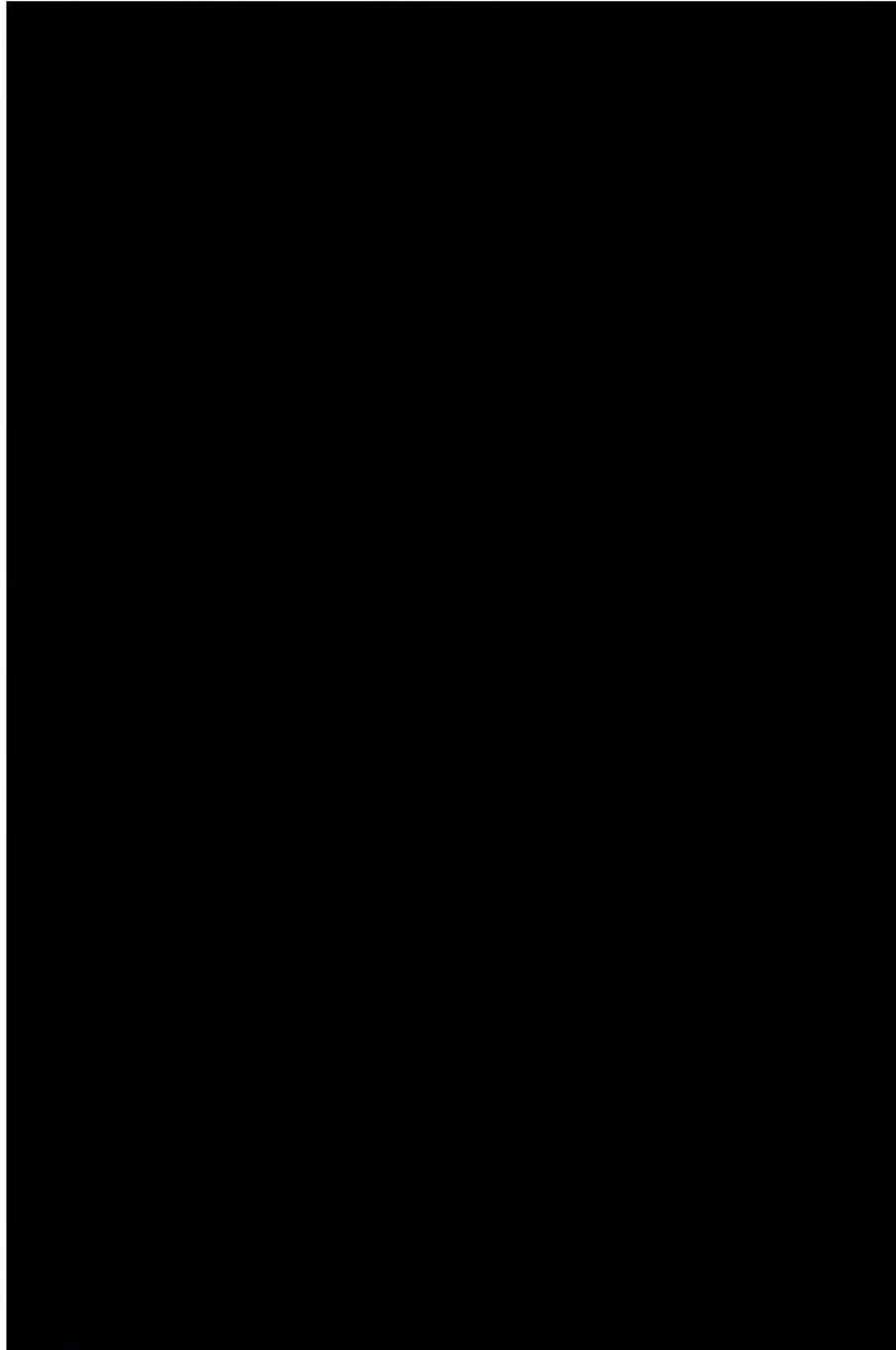


STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

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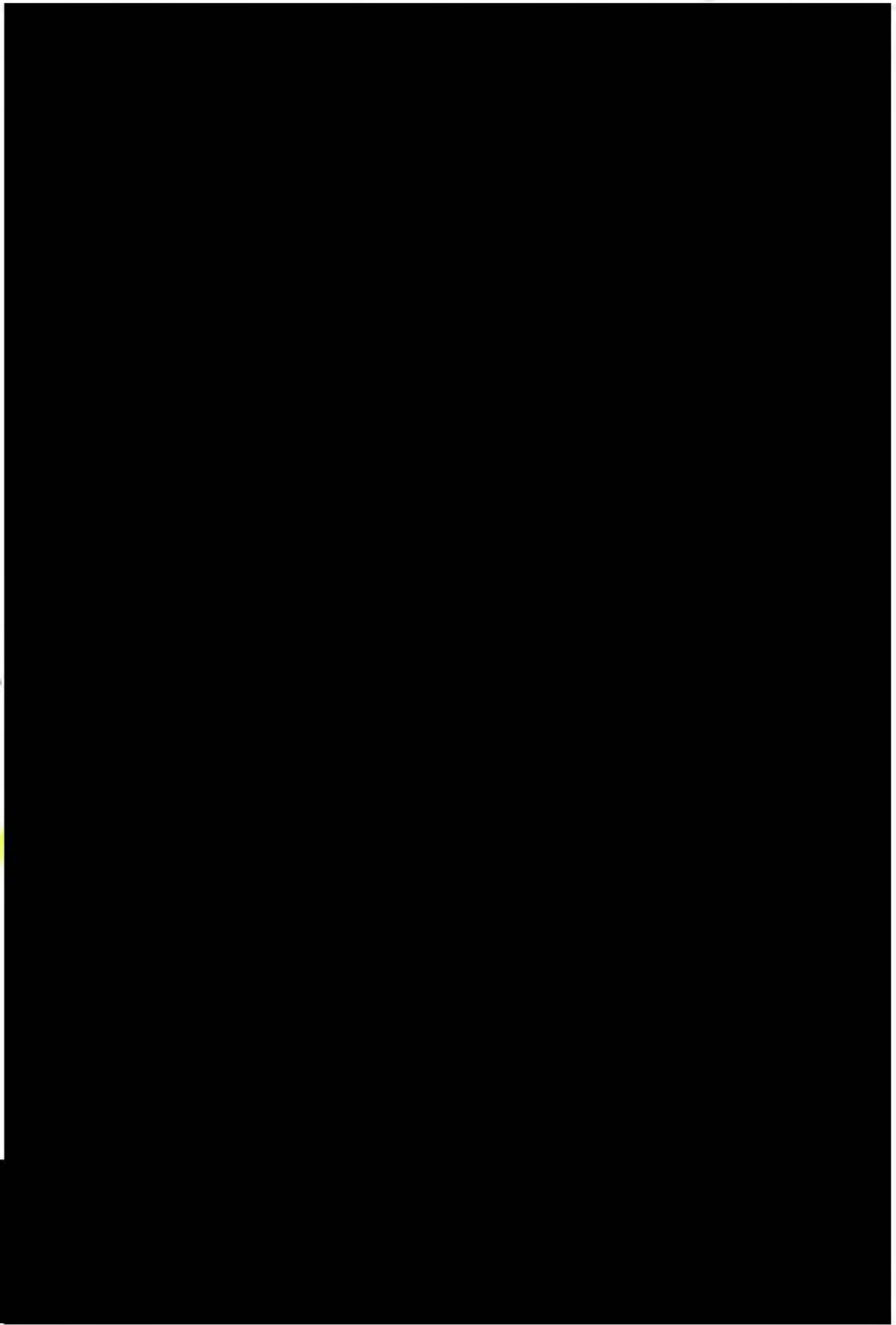


STATE OF CALIFORNIA  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

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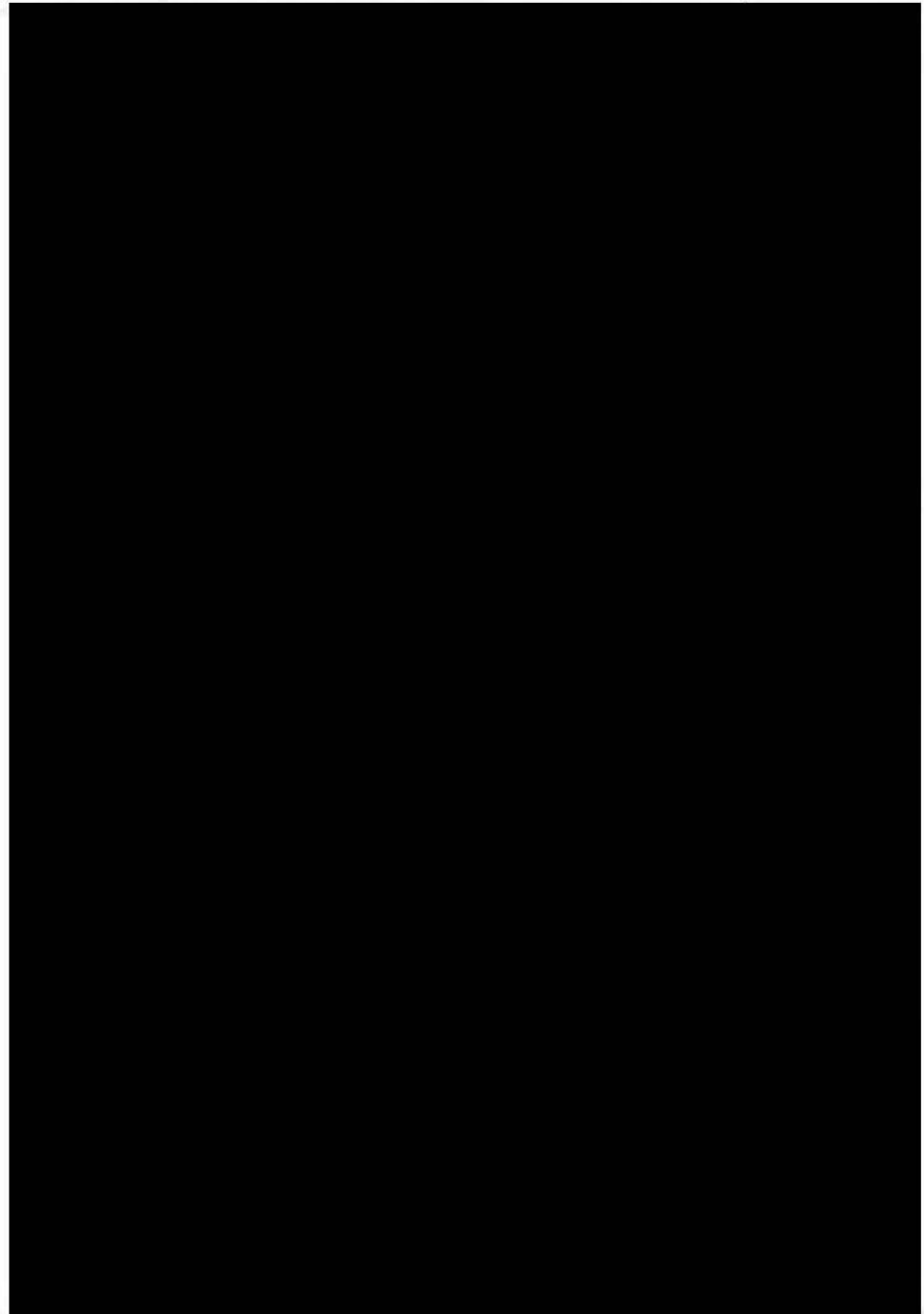


STATE OF CALIFORNIA  
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INVESTIGATION REPORT  
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Invest. Name: SSAC William Thomas Telish

Invest. No.



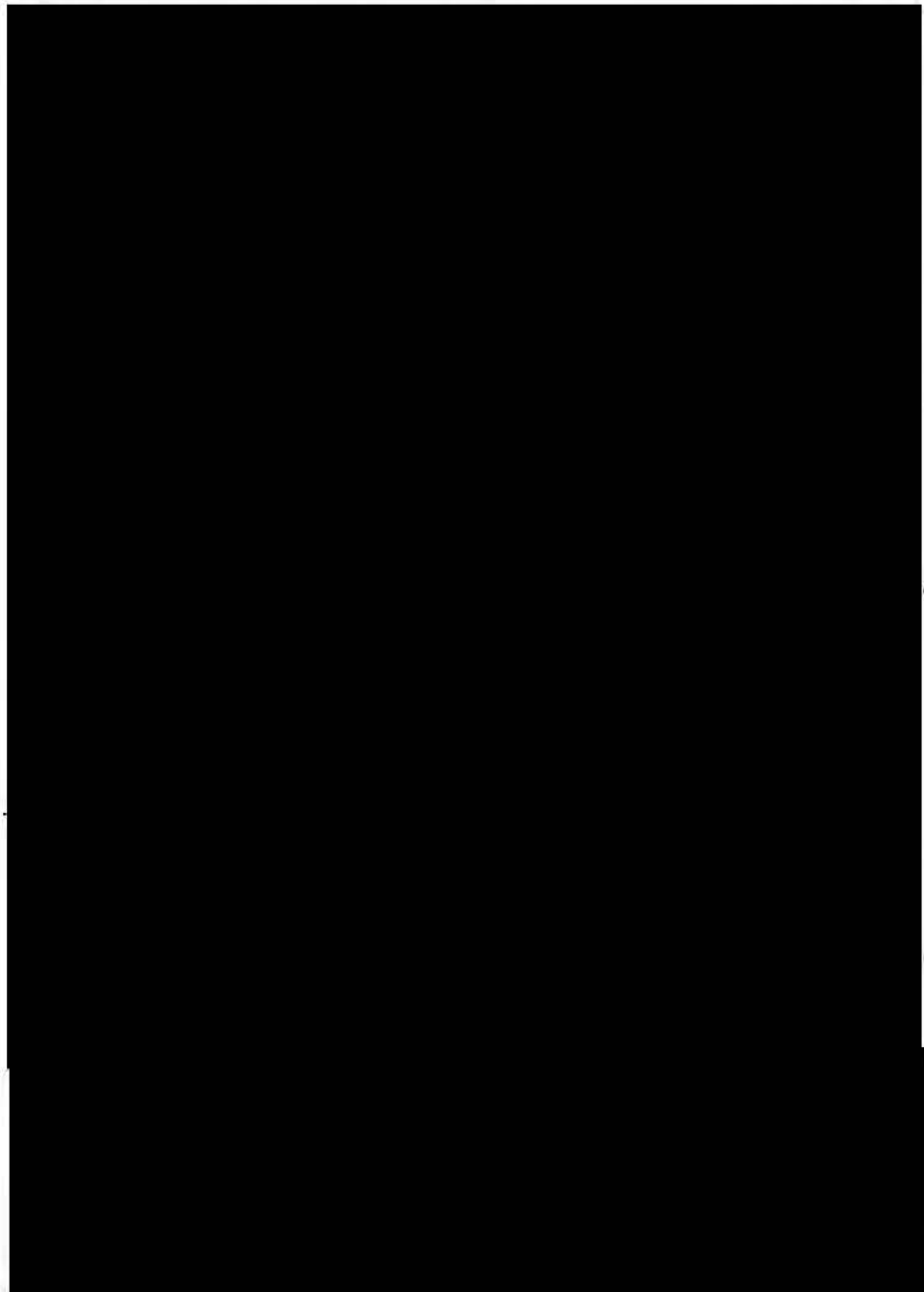


STATE OF CALIFORNIA  
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OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.



April 1, 2020



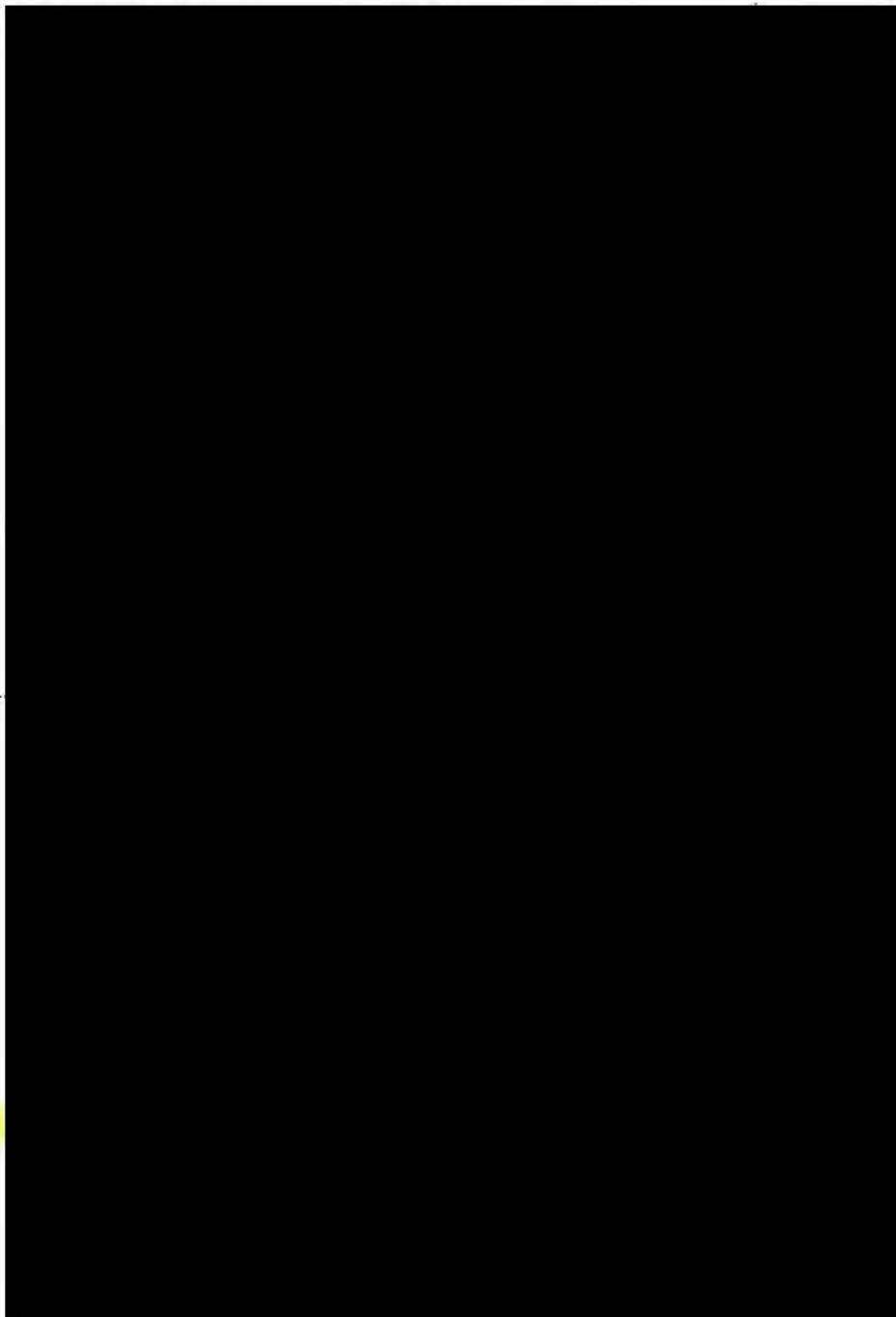
STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.

April 5, 2010





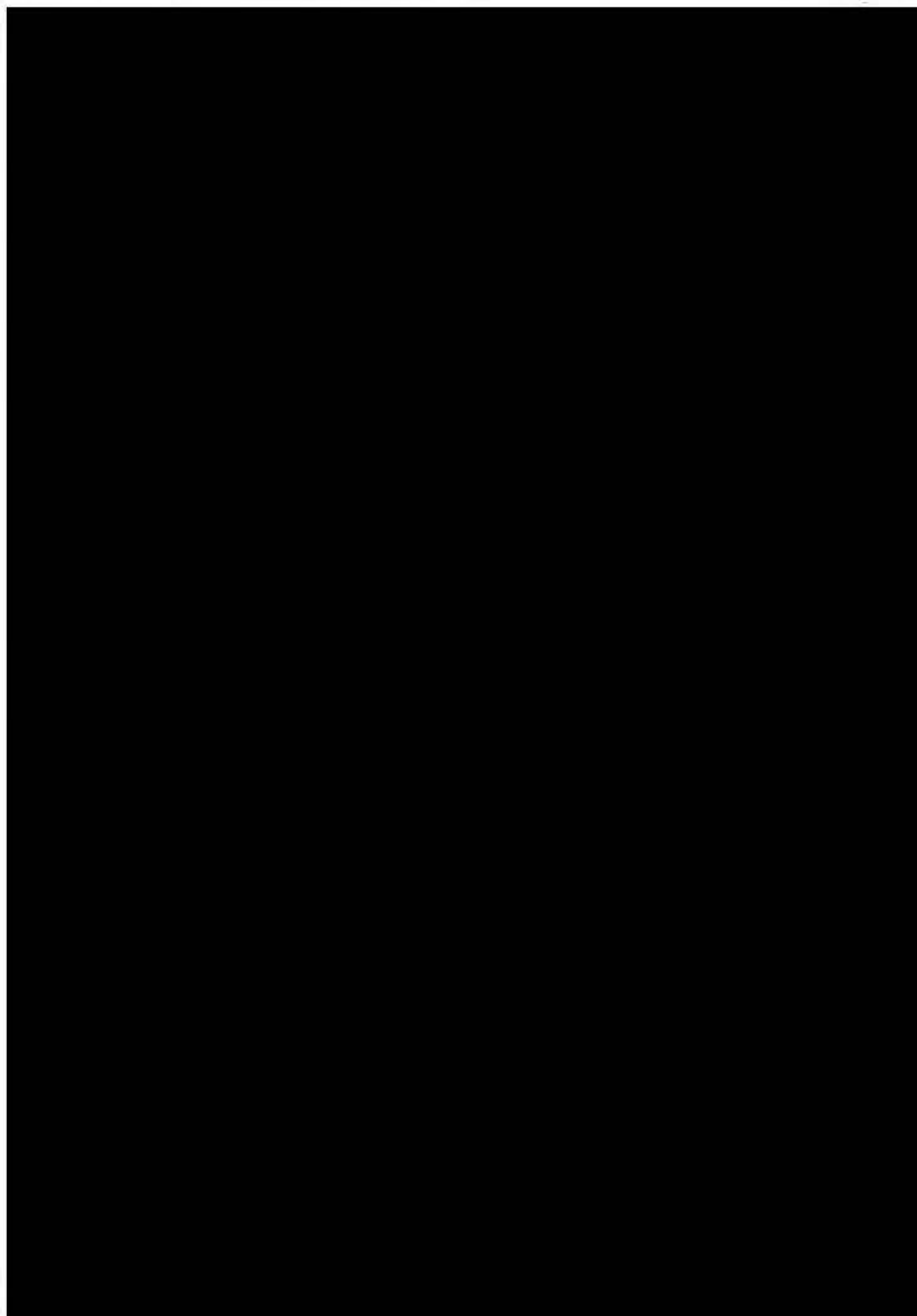


STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.



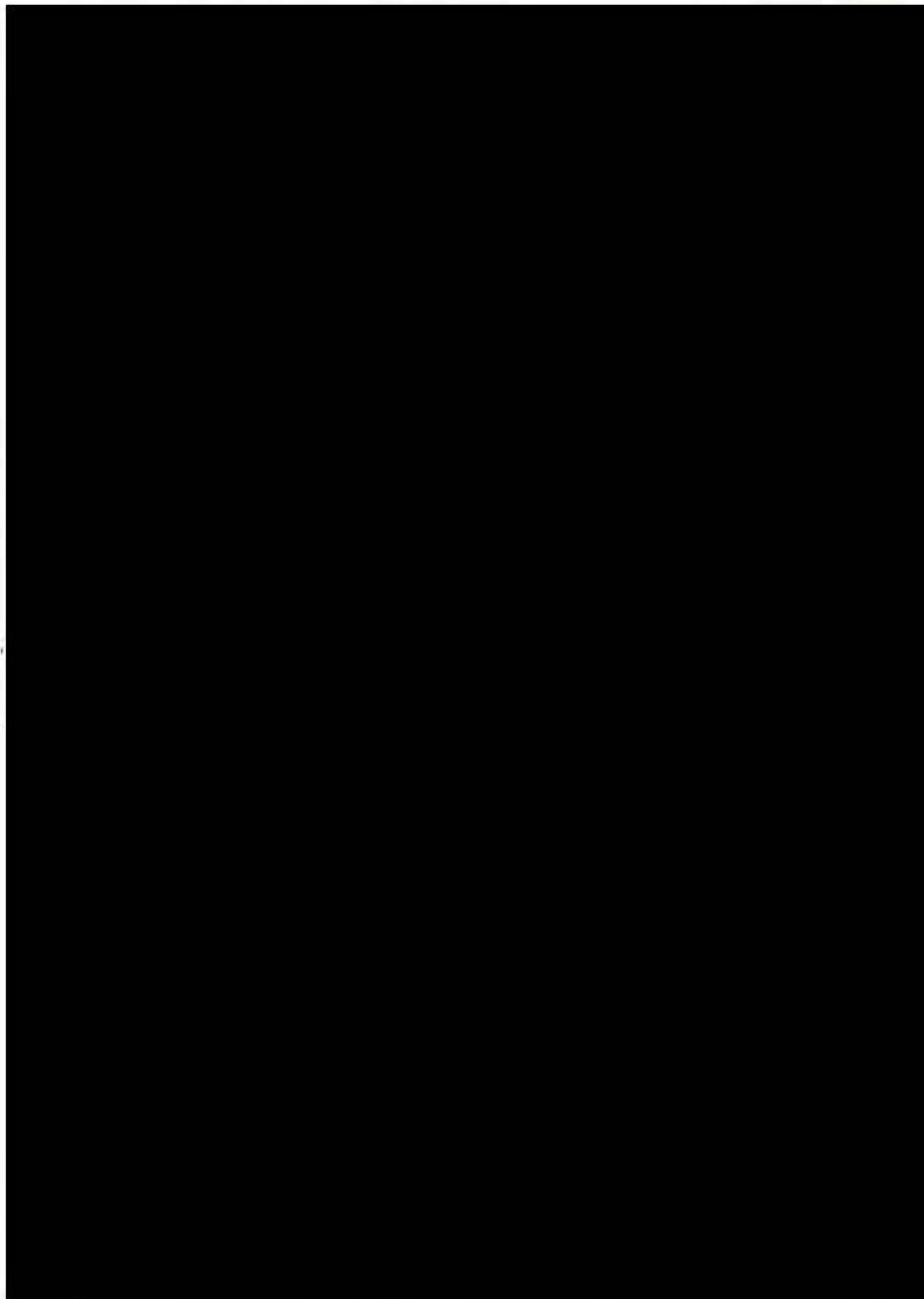


STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_



STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.

[REDACTED]

When asked about his taking of ID 's cellular phone that night he stated that he thought she was getting a text message from a guy she was "having an affair" with and he attempted to look at the text. (pages 66-67) She realized what was going on and attempted to get the phone. Telish stated he "pushed her away" from him. (page 67) She got mad and said "I want my phone, give me my phone right now." (page 67) So he said he gave it to her. Then he told her if you want to see me, you need to let me see the phone. So she let him see the phone and they sat together while he scrolled through her text messages. (pages 68, 103) He stated that he never held her down. (page 68-69, 71) He said the situation started out "playful" but then she got mad so he gave her the phone. He does not recall telling her he was stronger than she was. (pages 69-70)

[REDACTED]

He said the situation involved a "physical struggle," she ripped his shirt and they "fell to the couch" but he did not hold her down.

[REDACTED]

[REDACTED]

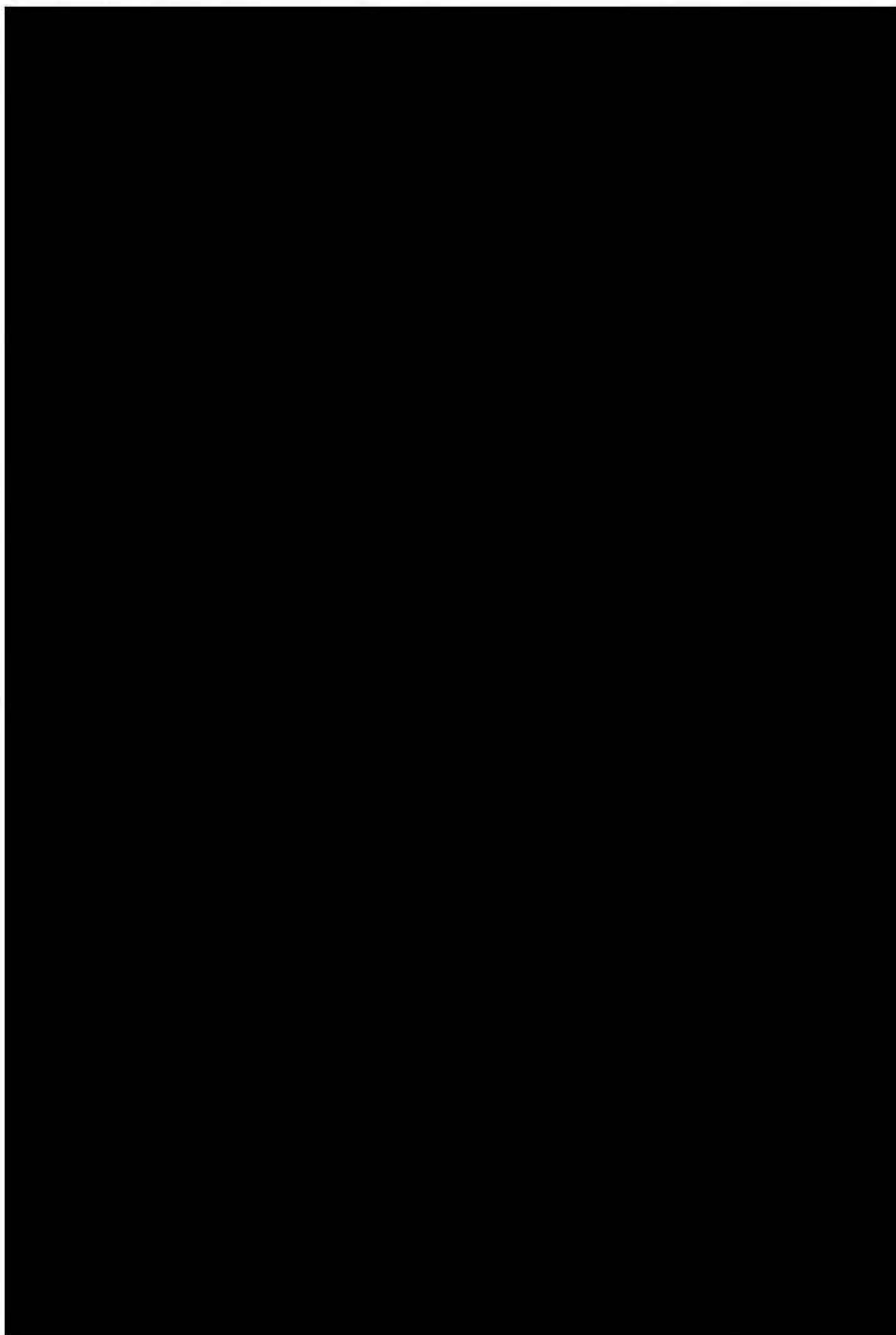


STATE OF CALIFORNIA  
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OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_





STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

April 12, 2010

[EXHIBIT TO NOTICE OF ADVERSE ACTION] DOJ - 002079

AG0000135

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish Invest. No. \_\_\_\_\_

[REDACTED]

LD then told Anderson that more recently Telish had come to her home and wanted to look at her cell phone. She told him that they struggled over the cell phone and that she ripped his shirt and that he "overpowered her." She told him that Telish forcibly held her down on the couch while he scrolled through information on the phone. Anderson was concerned about what LD told him and he contacted DLE Deputy Director Richard Lopes to tell him about the above incidents. He made the contact because he believed that what LD had described were crimes.

[REDACTED]



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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish Invest. No. \_\_\_\_\_

genuinely credible person. (Anderson interview transcript, Attachment 21)

April 16, 2010

May 5, 2010

FACTS SUPPORTING, REFUTING AND OTHERWISE RELATING TO THE  
ALLEGATIONS

Allegation number 1:

1.

2.

3.



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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.

[REDACTED]

[REDACTED]

1.

[REDACTED]

2.

[REDACTED]

Allegation number 3:

[REDACTED]

1.

[REDACTED]

2.

[REDACTED]

Allegation number 4:

[REDACTED]



STATE OF CALIFORNIA  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

to deny that she and Telish were having an affair? [Violation of CGC Section  
19572, subsections (d) (m) and (t)]

1.

2.

3.

4.

Allegation number 5:

1.

STATE OF CALIFORNIA  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.

2.

3.

Allegation number 6: Did Telish assault LD at her home in October 2009 by forcibly holding her down while he searched her cellular phone without her permission?  
[Violation of CGC Section 19572, subsections (m) and (t)]

1. stated that on the evening of October 27, 2009, Telish came to her apartment on his way to a meeting in Santa Barbara. She indicated that they had sex and that afterward they had a physical struggle over her cellular phone. Telish had picked it up and was looking through her text messages and call log and she tried to take the phone away from him. Telish physically restrained her by holding her down on the sofa with one arm, while continuing to look at the cell phone with the other. Telish told DL to stop fighting him, that he was stronger than she was and that there was no point in struggling. She eventually stopped struggling and he continued to examine the phone. ( LD Interview, Attachment 1, pp. 34-35, 43-45)
2. LD agreed to take a polygraph examination and was asked questions about her allegations that Telish forcibly held her down and reviewed her cellular phone against her will. She answered the questions affirmatively in a manner that showed "no significant stress or deception." (Polygraph Report, Attachment 3)
3. Telish stated that while he was at her home, he thought she was getting a text message from a guy she was "having an affair" with and he attempted to look at the text. (pages 66-67) She realized what was going on and attempted to get the phone. Telish stated he "pushed her away" from him. (page 67) She got mad and said "I want my phone, give me my phone right now." (page 67) So he said he gave it to

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

her. Then he told her if you want to see me, you need to let me see the phone. So she let him see the phone and they sat together while he scrolled through her text messages. (pages 68, 103) He stated that he never held her down. (page 68-69, 71) He said the situation started out "playful" but then she got mad so he gave her the phone. He does not recall telling her he was stronger than she was. (pages 69-70) He said the situation involved a "physical struggle," she ripped his shirt and they "fell to the couch" but he did not hold her down. (page 71-72) (Telish interview transcript, Attachment 19)

4. In the tape recorded conversation between Telish and LD on February 23, 2010, they discussed the October 27, 2009, incident with her cellular phone. LD says in the call "I was trying to get it away from you and you - - what the hell, you held me down. What the fuck. What kind of behavior is that? I don't want you doing that kind of shit anymore to me." And Telish responded "okay." Telish then goes on to say "Well okay, then you need to stop bullshitting me and lying, and you'll be trusted." Then LD goes on to say: "Well, you tell me that - - to stop fighting with you. Remember? You said that you'll let go of me if I tell you what's going on. So I did, right?" And Telish responds "Right. And I had to do that, didn't I?" Later Telish states "You're just mad because you got caught, that's all. You got caught, and you're mad about it. And you're - and you're worried that I may catch you again, that's why you're bringing this up." LD goes on to describe the situation as "you were holding me down on the couch. I was trying - -" and Telish interrupts to say "And why was I doing that?" and indicates that it sounds like he "was pretty justified, doesn't it?" (pages 8-13) (2/23/10 1418 hours telephone call transcript, Attachment 8)

Allegation number 7:

1.

2.

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INVESTIGATION REPORT  
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Invest. Name: SSAC William Thomas Telish

Invest. No.

3.

Allegation number 8:

1.

2.

STATE OF CALIFORNIA  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

3.

4.

Allegation number 9:

1.

2.



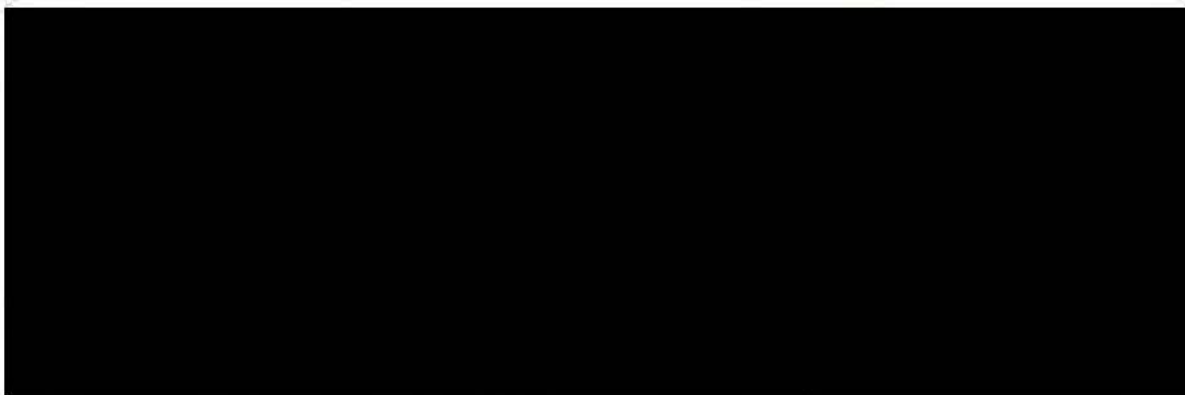
STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_

FINDINGS



(d) Inexcusable Neglect of Duty – Sustained

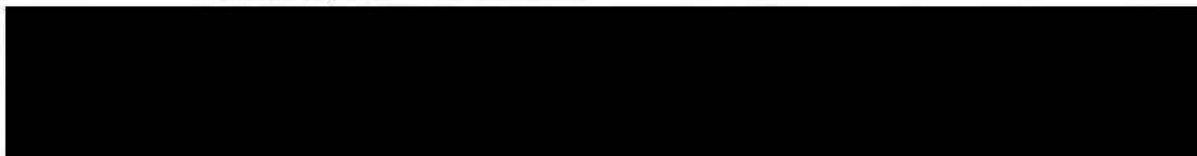
(f) Dishonesty – Sustained

(m) Discourteous treatment of the public or other employees – Sustained



(t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment – Sustained

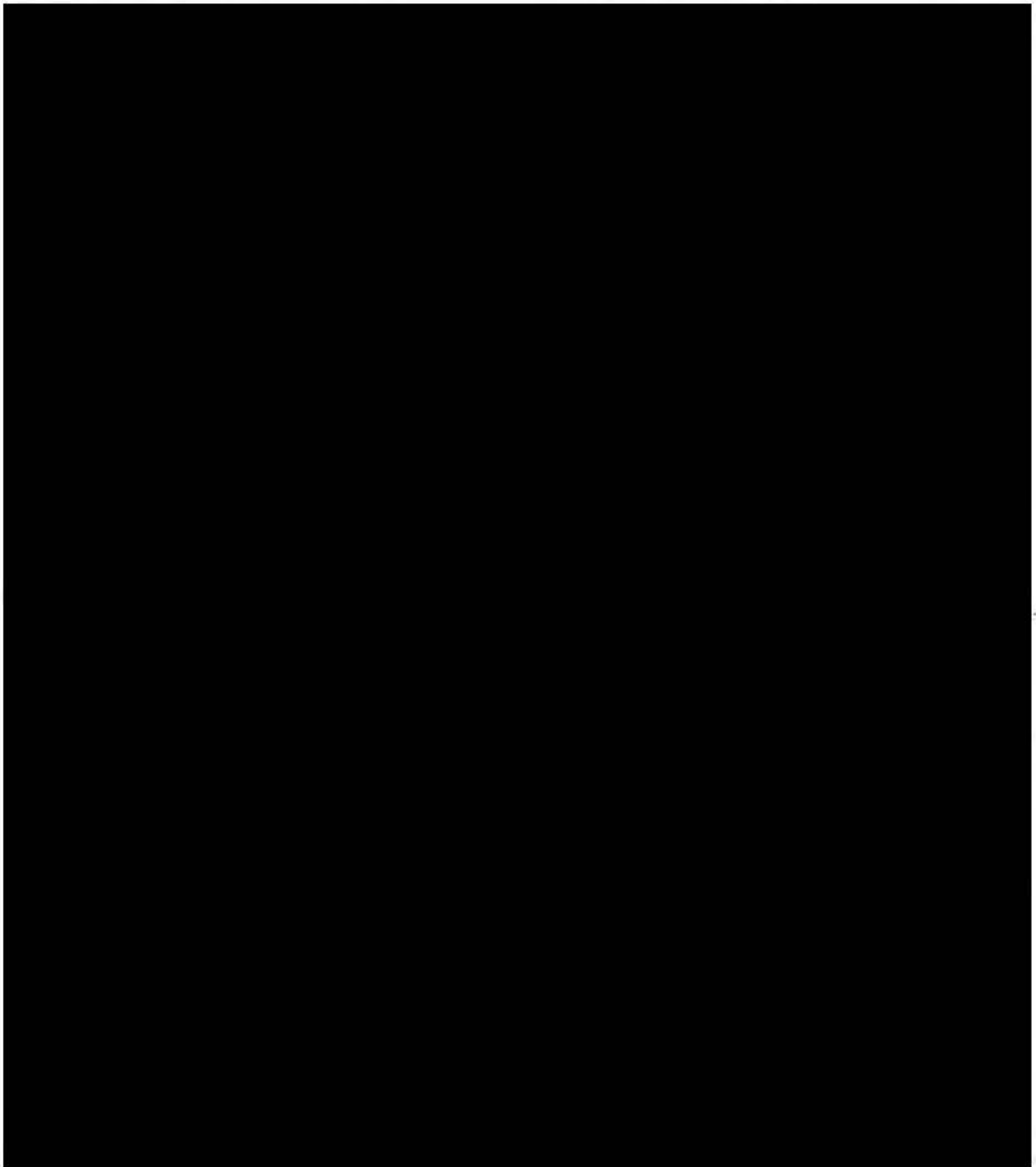
(w) Unlawful discrimination, including harassment, on any basis listed in subdivision (a) of Section 12940, against the public or other employees while acting in the capacity of a state employee – Not Sustained



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INVESTIGATION REPORT  
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Invest. Name: SSAC William Thomas Telish Invest. No.

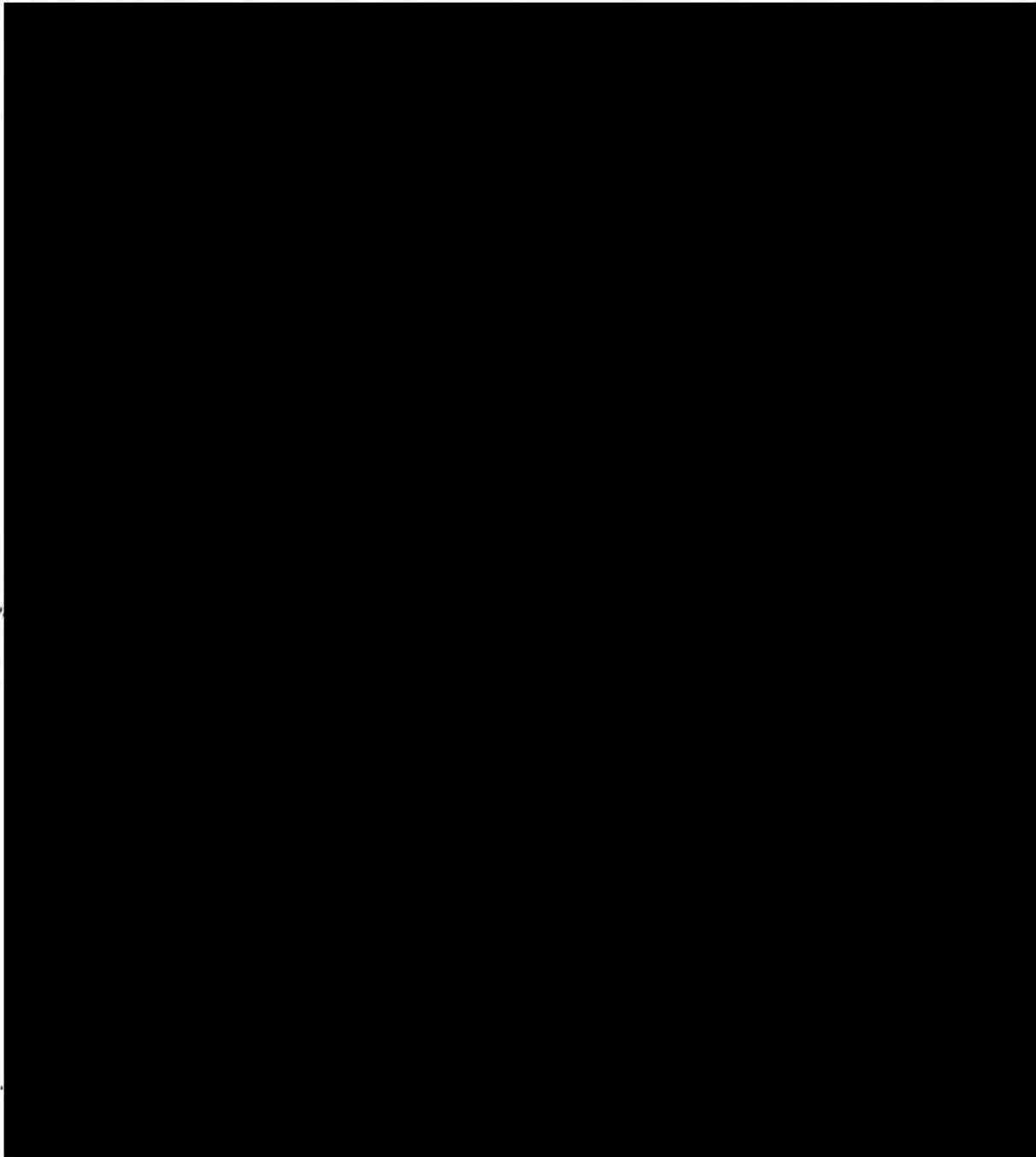


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DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No.



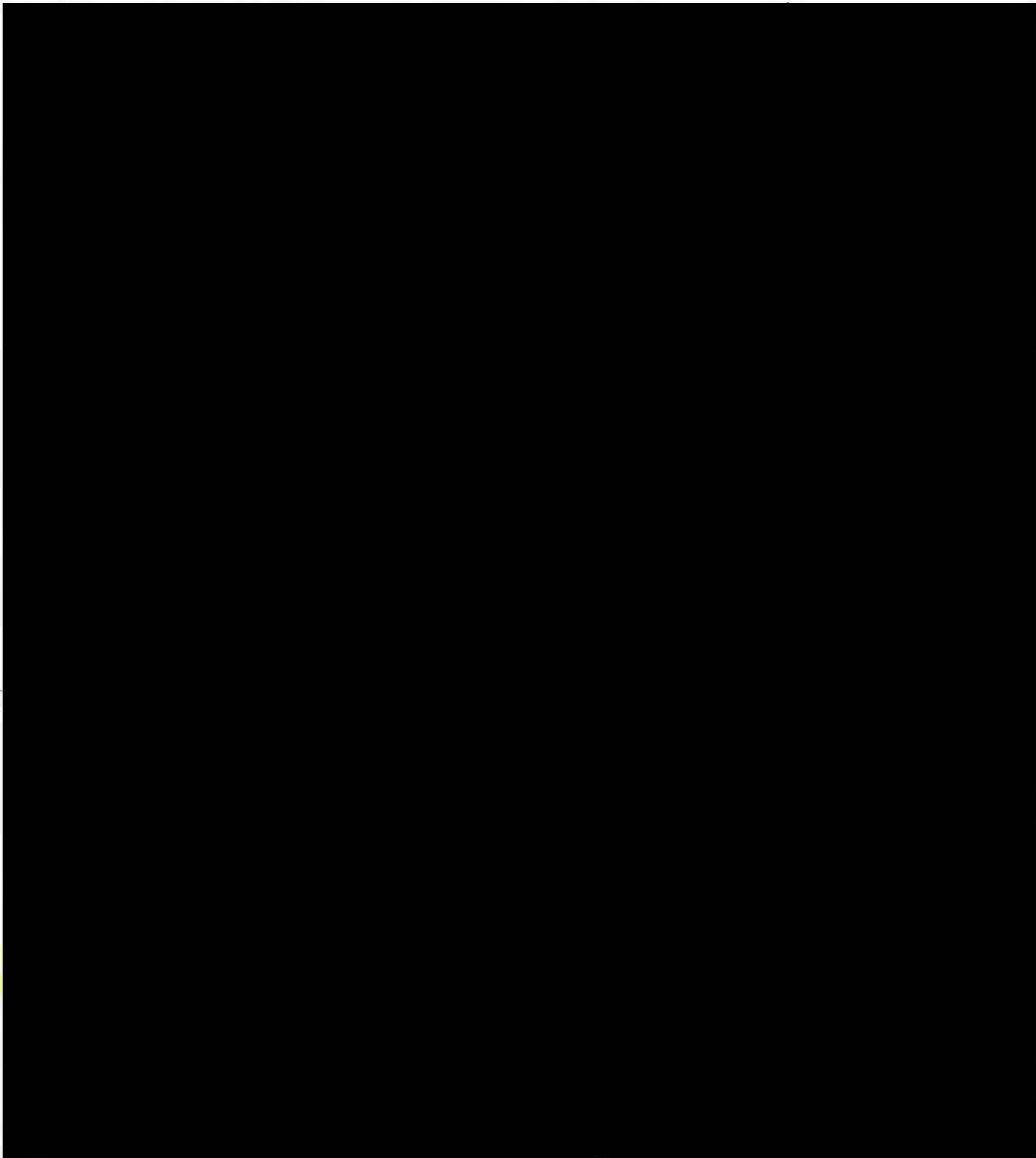


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INVESTIGATION REPORT  
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Invest. Name: SSAC William Thomas Telish

Invest. No.

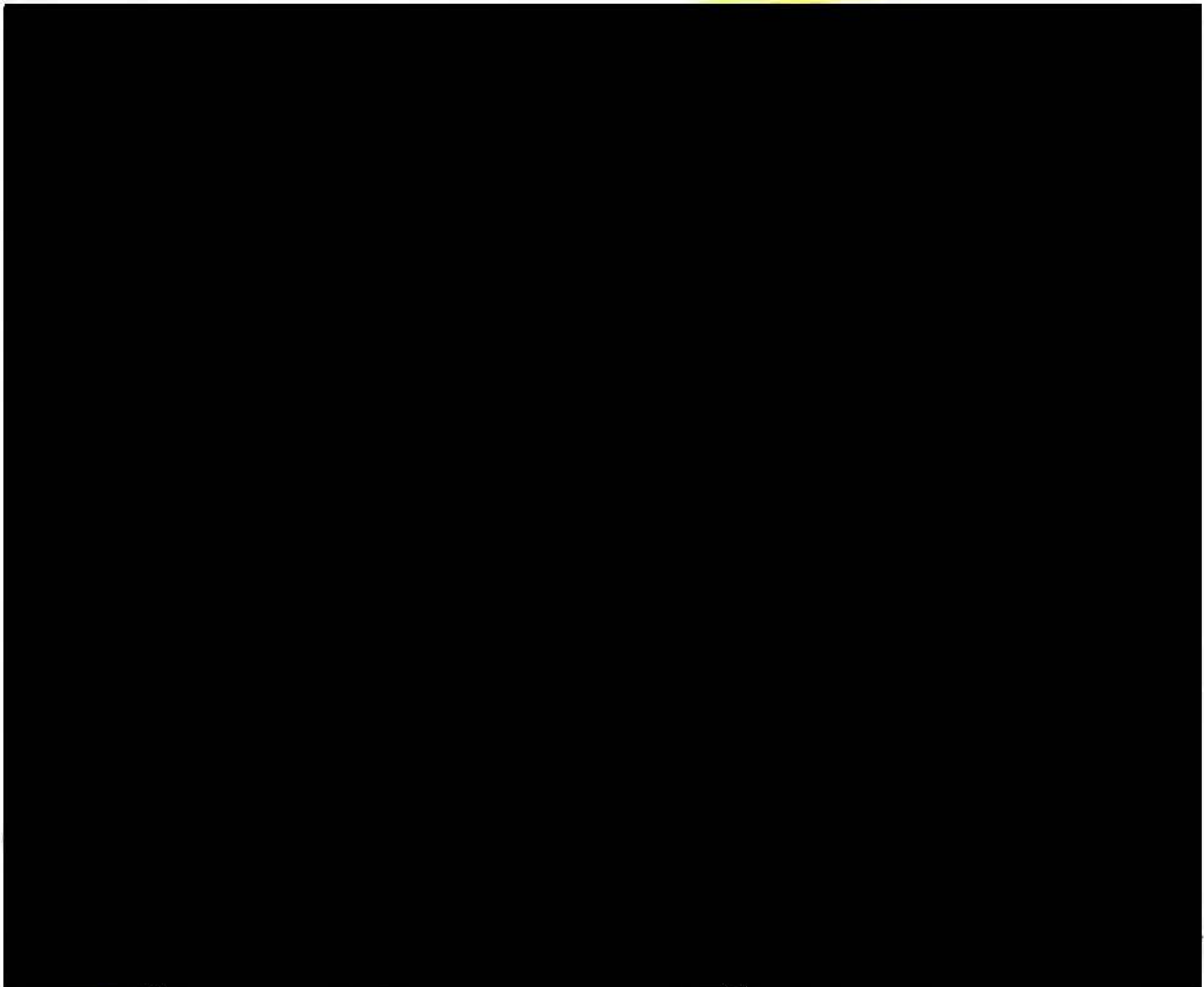


STATE OF CALIFORNIA  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: SSAC William Thomas Telish

Invest. No. \_\_\_\_\_



B. Seidman 5/6/10  
Barbara Seidman Date  
Supervising Deputy Attorney General

A. Fowler 5/6/10  
Alicia Fowler Date  
Senior Assistant Attorney General

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE DIRECTOR

INVESTIGATION REPORT

Investigation Title: William Telish Sr. Special Agent in Charge	Date: March 1, 2010	Investigation No.: HQ10-0007
Report Number: 1	Type of Report: Opening/Closing	Case X-Ref:
Case Agent: Paul Stauts, SAS	Reporting Agent: Paul Stauts, SAS	Supervisor: Nathan DaValle, SAC

INTRODUCTION:

Subject of Investigation:

William Thomas TELISH

Senior Special Agent in Charge  
Bureau of Narcotic Enforcement  
Riverside Regional Office  
829 Marlborough Ave.  
Riverside, CA 92507  
[REDACTED]

Department of Justice (DOJ) Senior Special Agent in Charge (SSAC) William TELISH is accused of violations of Penal Code (PC) Sections 136.1, Intimidation of witnesses and victims; and 236, False imprisonment.

DESCRIPTION OF THE INVESTIGATION:

On December 17, 2009, DOJ, Division of Law Enforcement (DLE), Deputy Director Rick Lopes received a telephone call from Placentia, California Chief of Police James Anderson. Chief Anderson told Deputy Director Lopes that one of his employees, his Secretary LD, was physically assaulted by TELISH. [REDACTED]

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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: Senior Special Agent in Charge William Telish

Invest. No. HQ10-0007

On December 18, 2009, Professional Standards Group (PSG) Special Agent in Charge (SAC) Nathan DaValle and Special Agent Supervisor (SAS) Catherine Gauthier traveled to Brea, California, met with and interviewed, former Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force (LA IMPACT) Financial Analyst [REDACTED] to follow-up on the information provided by Chief Anderson. The interview with Drylie was digitally recorded, and a transcription of the recording was made on March 2, 2010, by Donna K. Nichols, Certified Shorthand Reporter (CSR number 5660). The transcription is included with this report as Attachment 1. [REDACTED] alleged the following in summary:

[REDACTED]

[REDACTED]

[REDACTED]



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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: Senior Special Agent in Charge William Telish

Invest. No. HQ10-0007

On October 27, 2009, at approximately 1900 hours, TELISH came to [REDACTED] apartment in Brea and the two engaged in sexual intercourse. [REDACTED] said the sex was very rough, and it hurt her. She told TELISH this and he replied, "Good." After the sex, the two went into the living room and sat on the sofa. TELISH noticed [REDACTED] cell phone on a nearby table, picked it up, and began to go through it looking for text messages and examining the call log. [REDACTED] became offended and tried to take her cell phone away from TELISH. TELISH physically restrained

LD by holding her down on the sofa with one hand while using the other to continue examining the phone. [REDACTED] struggled with TELISH trying to get away and to retrieve her phone. In the ensuing struggle [REDACTED] ripped the sleeve of TELISH's shirt. TELISH told [REDACTED] to stop fighting him, he was stronger than her, and there was no point in struggling. Drylie knew TELISH was correct, so eventually she gave up trying to fight back. Once she did so TELISH released her and she sat by while he examined the phone. Once TELISH concluded his examination, he formed the opinion that [REDACTED] was having sex with another man and confronted her with his suspicion. After arguing about the supposed relationship with the other man, TELISH left [REDACTED] residence to meet with another SAC from DOJ in order to drive to Santa Barbara to visit the DOJ Task Force there.

One week later TELISH called [REDACTED] on the telephone at work and asked her how she was doing. [REDACTED] said that in the past TELISH never called her phone, he always had her call him so a record of the call would not appear on his Nextel bill. [REDACTED] was concerned about the call, and decided to tell her boss, Chief Anderson the entire story. Chief Anderson then told DOJ management. SAC Davalle asked [REDACTED] if she would be willing to take a polygraph test regarding the above statement, and she agreed to do so. SAC DaValle also told [REDACTED] that DOJ would be conducting a criminal investigation into her allegations, and that as part of that criminal investigation she was authorized to surreptitiously record any conversations she had with TELISH.

On December 21, 2009, at approximately 1000 hours, I met with SAC Davalle and SAS Gauthier. SAC Davalle told me that DLE Director Anderson had determined a criminal investigation would be conducted by DLE headquarters into the allegations made by [REDACTED] against TELISH, and I was assigned to conduct the investigation. Director Anderson also asked that [REDACTED] be given a polygraph examination to determine if the statements she was making were truthful, if she was still willing to do so.

At approximately 1030 hours, I called [REDACTED] and introduced myself. I explained I would be conducting a criminal the investigation into her complaint against TELISH, and asked her if she was still willing to submit to a polygraph examination. [REDACTED] said she was. I also explained to LD, that as part of a criminal investigation, she could lawfully record conversations she had with TELISH without his knowledge or permission. I told [REDACTED] to record any and all telephone calls she might have occasion to have with TELISH, and to focus on discussing both the incident [REDACTED] on the sofa against her will as well as the incident wherein he



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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: Senior Special Agent in Charge William Telish

Invest. No. HQ10-0007

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

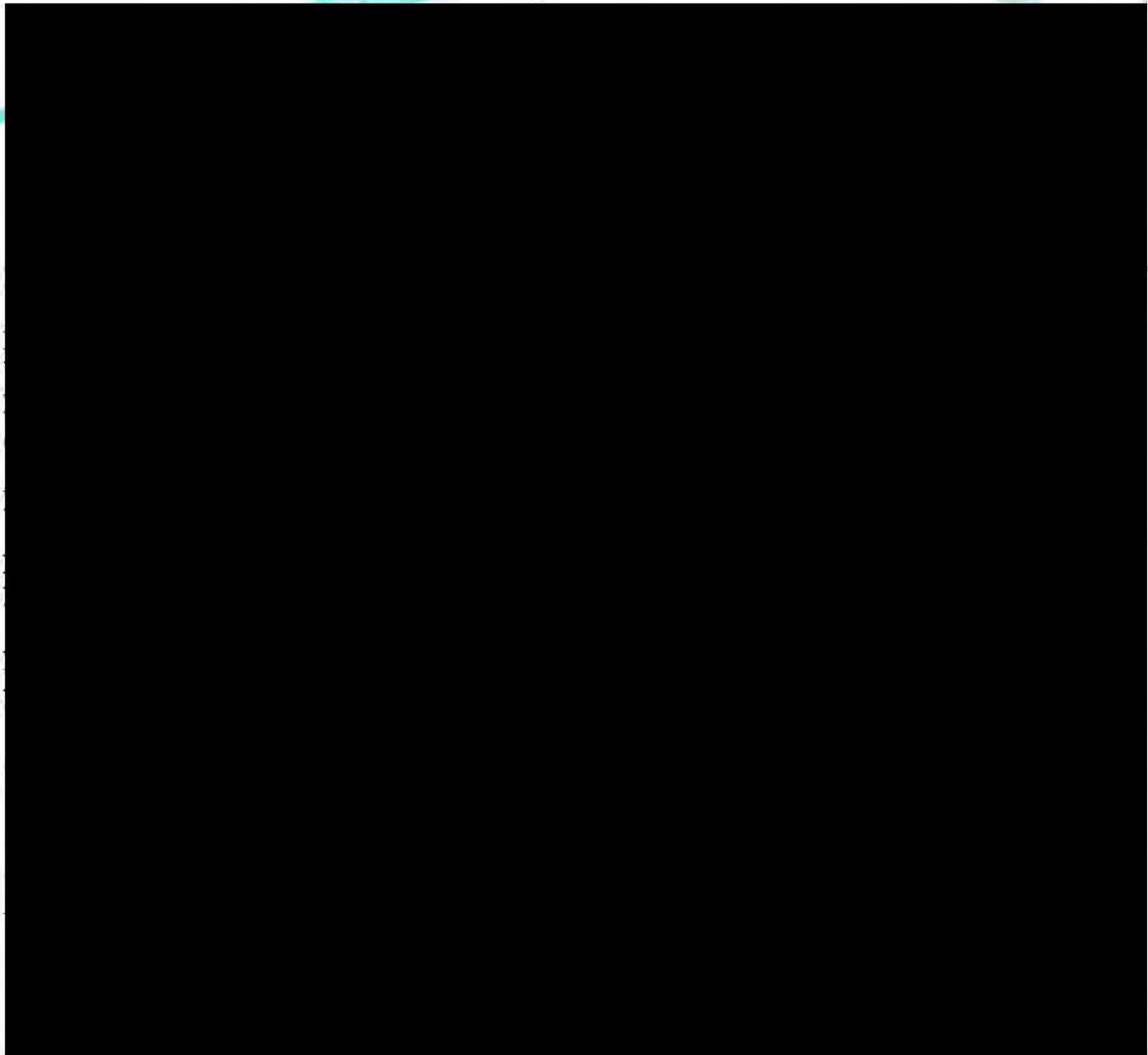
[REDACTED]

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE DIRECTOR

INVESTIGATION REPORT  
CONTINUATION

Invest. Name: Senior Special Agent in Charge William Telish

Invest. No. HQ111-0007

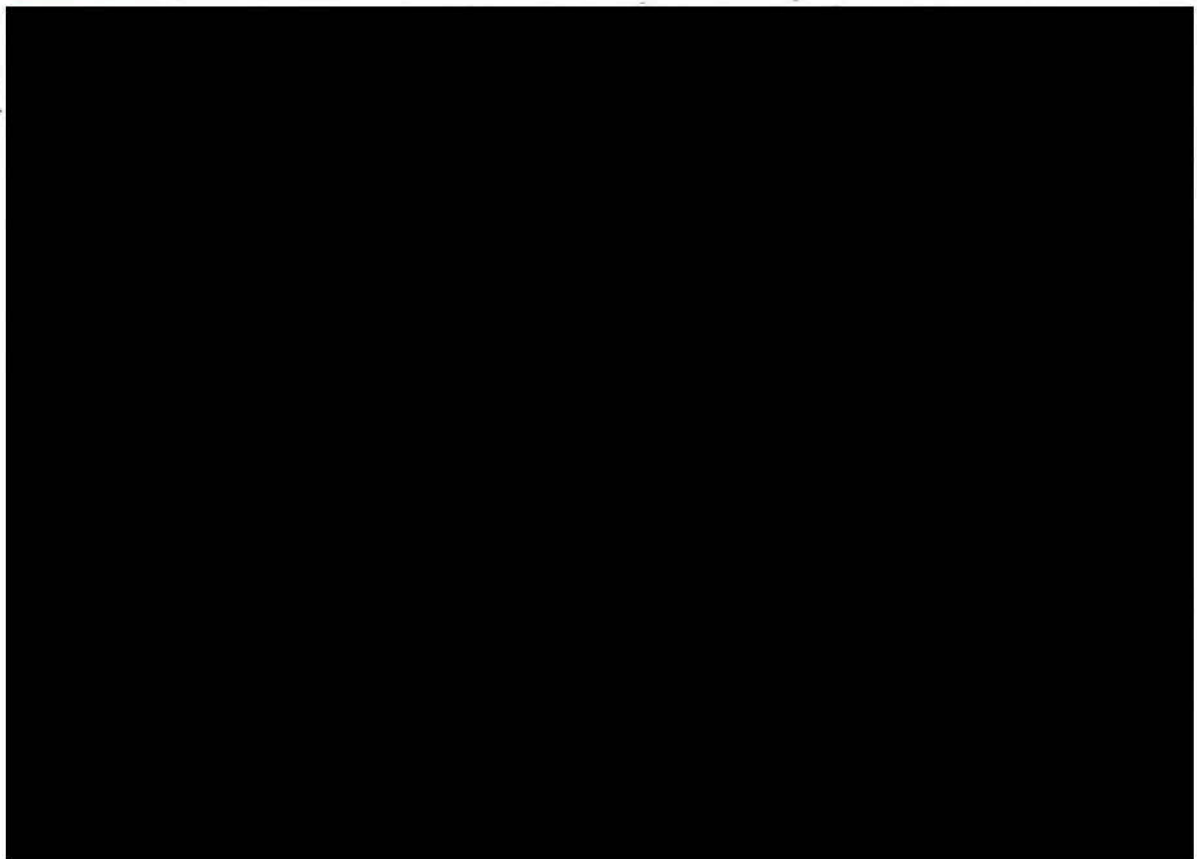
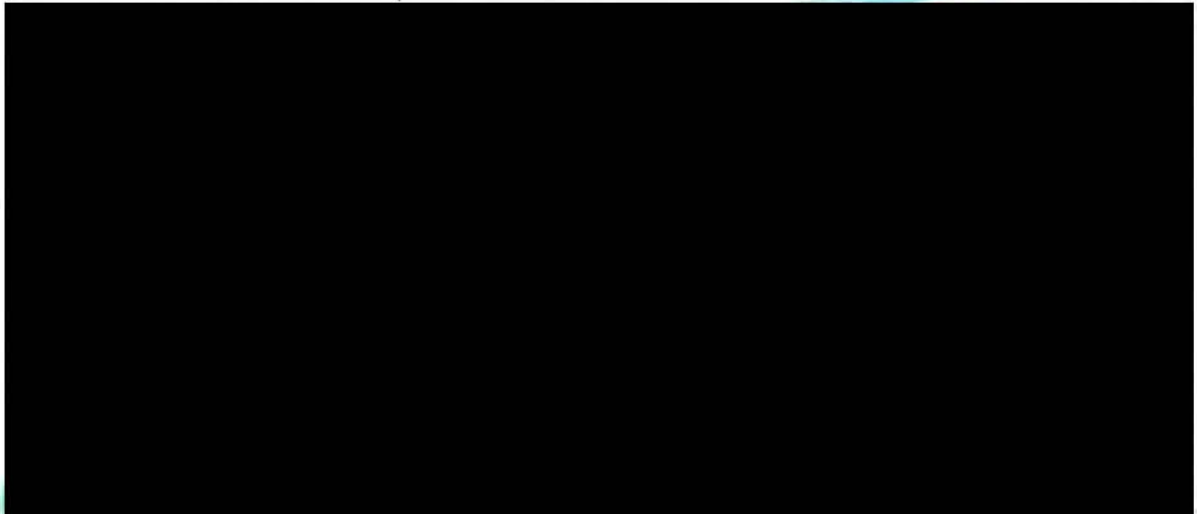


STATE OF CALIFORNIA  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: Senior Special Agent in Charge William Telish

Invest. No. HQ10-0007



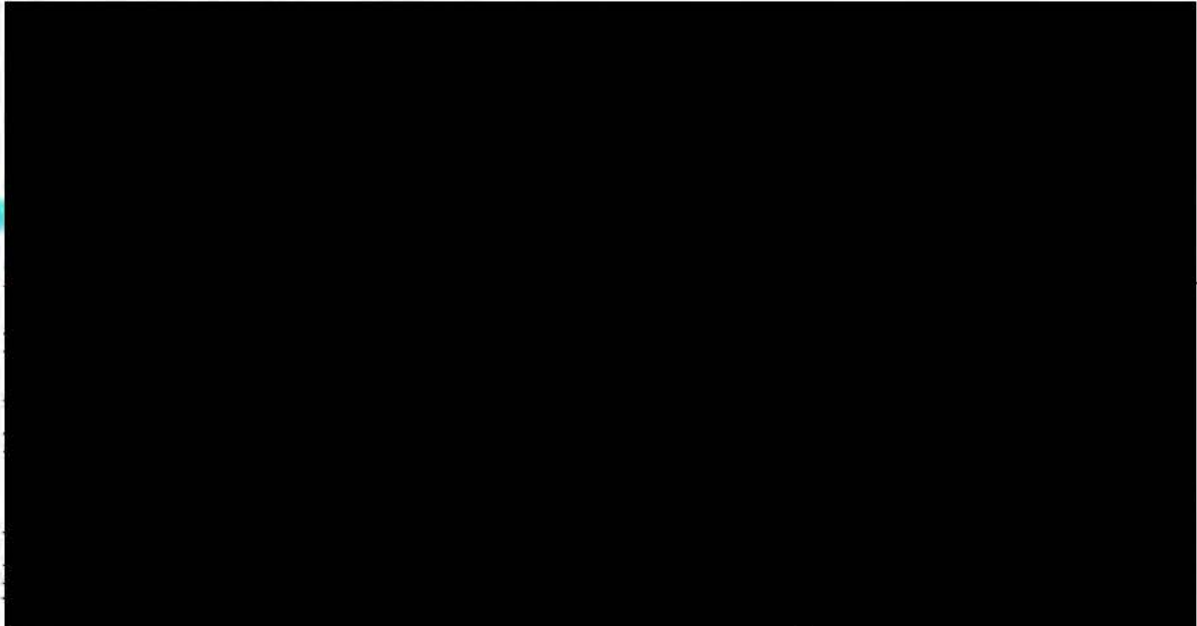


STATE OF CALIFORNIA  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: Senior Special Agent in Charge William Telish

Invest. No. HQ10-0007



[REDACTED] also confronted TELISH about his physically restraining her on the sofa against her will:

LD: And that's it. And another thing too, remember when you came over, and the last time and, why did you look through my phone? What was that all about?

WT: Um, I don't know, I don't remember.

LD: It was, my phone was on my table, what did you go through it for? You just picked it...

WT: I don't know.

LD: ...and started looking through it, remember that? And I was trying to get it away from you.

WT: Oh, and I caught you talking with, uh, Purvis

LD: Well, you know, I was, you picked up the phone, I wasn't even doing anything.

WT: No, I think the phone rang.

LD: No it didn't.

WT: And, or it texted or something, something buzzed on it.

LD: No. It was just sitting on my, on my table, you walked in...

WT: No, there was a reason, I can't remember, I can't remember the reason was, but there was a reason why it drew my attention to it.

LD: Well you picked....

WT: Something.

LD: ...regardless, you picked it up, you looked through it, remember that I was trying to get it away from you, and you, what the hell, you held me down, what the fuck? What kind of behavior is that, I don't want you doing that kind of shit anymore to me.

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INVESTIGATION REPORT  
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Invest. Name: Senior Special Agent in Charge William Telish

Invest. No. HQ10-0007

LD: You know, I want there to be more trust.  
WT: OK, well then you need to quit bullshitting me and lying, and you'll be trusted.  
LD: Lying about what?  
WT: You flat out lied to me about who was on the phone.  
LD: Well, you told me that, to stop fighting with you, remember, you said you would let go of me if I tell you what's going on, so I did, right?  
WT: Right, and I had to do that didn't I?  
LD: You said, you said, you said....  
WT: Why did you have to put up such a fuss? Why did you, why did you try to hide it?  
LD: Because it's none of your business to go through my phone. How would you like it if I did that to you?  
WT: You can go through my phone.  
LD: You, bullshit, you won't let me do that.  
WT: You want to bet?  
LD: Oh, we need to have more....  
WT: You're just mad because you got caught, that's all. You got caught and you're mad about it. And you're worried I may catch you again, that's why you're bringing this up.  
LD: Oh, please. How, did I, did I rip that shirt of yours? I think I did, didn't I?  
WT: You did.  
LD: Oh, shit, did you have to get it fixed?  
WT: Yep.  
LD: Uh, oh. Well....  
WT: Now what kind of behavior is that?  
LD: You were holding me down on the couch, I was trying....  
WT: And why was I doing that?  
LD: Because you were trying to look through my phone.  
WT: And why was I doing that?  
LD: Because you thought that I was seeing somebody.  
WT: And I was right, wasn't I?

And later TELISH expounded on the altercation:

WT: All right, but you're just you're a little chagrined, and that is the correct adjective, because I caught you. That's all. So don't be upset. The only reason why I caught you is because I knew something was up, and I had to figure it out if it was true or not.  
LD: Don't ever hold me down like that, that's not nice. You don't do that to people you care about. It's just...  
WT: Well that's true, true, true, and you don't do, you don't lie, and push on people you care about either.



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CONTINUATION

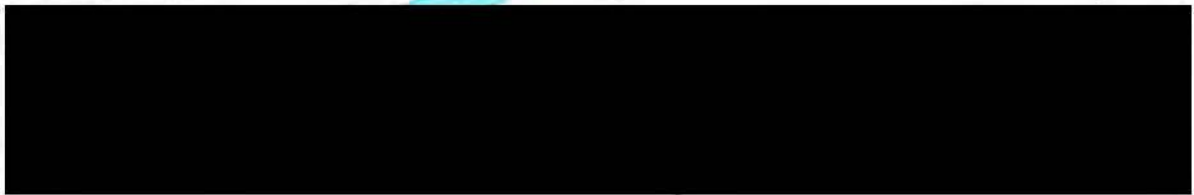
Invest. Name: Senior Special Agent in Charge William Telish

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Finally TELISH added this:

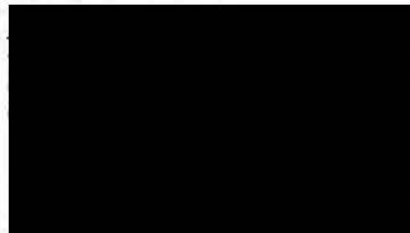
WT: That's right, and then who, you know, and again, you know, a lot of this is, you know, is you're creating your issue here. You know you're saying I do things to piss you off, like, you know, the phone thing, well, OK, good enough, but you have to look at why I did it. I didn't do it just because I felt like being an asshole, right?

CONCLUSION:



WITNESSES:

Paul Stauts  
Special Agent Supervisor  
California Department of Justice  
1102 Q Street, 6th Floor  
Sacramento, CA 95811  
(916) 319-8267





STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
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INVESTIGATION REPORT  
CONTINUATION

Invest. Name: Senior Special Agent in Charge William Telish

Invest. No. HQ10-0007

[REDACTED]

[REDACTED]

[REDACTED]

SUSPECT DESCRIPTION:

William Thomas Telish [REDACTED]

Bureau of Narcotic Enforcement  
Riverside Regional Office  
829 Marlborough Ave  
Riverside, CA 92507

[REDACTED]

EVIDENCE:

One (1) compact disc containing nine (9) mp3 audio files, eight (8) of which are recorded telephone conversations between TELISH and [REDACTED] and one (1) of which is the recorded interview of [REDACTED] by SAC DaValle and SAS Gauthier. The file name indicates the type of recording and the date and time of recording.



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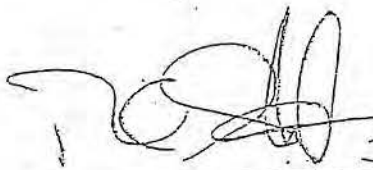
INVESTIGATION REPORT  
CONTINUATION

Invest. Name: Senior Special Agent in Charge William Telish

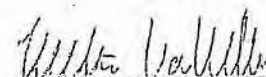
Invest. No. HQ10-0007

ATTACHMENTS:

- 1 Transcription of interview of December 18, 2009.
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED] Drylie
- 5 Transcription of telephone conversation between William Telish and recorded on February 23, 2010.

  
\_\_\_\_\_  
Paul Stauts  
Special Agent Supervisor

3/8/10  
Date

  
\_\_\_\_\_  
Nathan DaValle  
Special Agent in Charge

3-8-10  
Date

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
PROFESSIONAL STANDARDS GROUP

**CERTIFIED COPY**

WILLIAM TELISH

HQ-10-0007

TRANSCRIPTION OF RECORDED

INTERVIEW WITH

LD ON DECEMBER 18, 2009

FROM 1324 TO 1504 HOURS

TRANSCRIBED BY: DONNA K. NICHOLS, RPR, CSR. 5660.

DOJ - 002095

AG0000160



1 SAS GAUTHIER: Okay, the date is December 18th. The  
2 time is 1324 hours. We are here interviewing

3 LD . It is myself, Special Agent Supervisor  
4 Catherine Gauthier, and Special Agent in Charge Nate  
5 DaValle. We are conducting the interview at [REDACTED]  
6 [REDACTED] Brea City, California, [REDACTED]  
7 [REDACTED]

8 SAC DAVALLE: Okay.

9 SAS GAUTHIER: Oh, and just for the record, LD ,  
10 today with this interview today, we are recording this  
11 interview and you are aware of that; correct?

12 MS. LD : Correct.

13 SAS GAUTHIER: Thank you.

14 SAC DAVALLE: Okay, LD first of all, you -- we  
15 understand we're in your home, right? This is your  
16 apartment?

17 MS. LD : Yes.

18 SAC DAVALLE: How long have you lived here?

19 MS. LD : Since July. It's been a few months.

20 SAC DAVALLE: Just a few months?

21 MS. LD : Mm-hmm.

22 SAC DAVALLE: Where did you live before that?

23 MS. LD : In [REDACTED]. Do you want the address?

24 SAC DAVALLE: Yeah, if you don't mind.

25 SAS GAUTHIER: Yeah.

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[REDACTED]

SAC DAVALLE: Okay, so while you were assigned to LA IMPACT in both capacities do you recall the time you first became first acquainted with Wil Telish?

MS. LD : When I first became acquainted with him was -- I was working for Rea in the finance department, and I -- and Jerry was promoted to assistant chief I believe. And then that meant that they put Wil in Jerry's spot. So he came over as a new director.

[REDACTED]



1 SAC DAVALLE: And in what capacity did you know him  
2 when you were at LA IMPACT?

3 MS. LD : I -- he was working I think on our gang  
4 unit, I believe. You know, I can't recall -- I know he  
5 worked by -- VSU.

6 SAC DAVALLE: Okay.

7 MS. LD : If that makes sense.

8 SAC DAVALLE: Sure. Violence Suppression Unit.

9 MS. LD : And -- and I believe he was put on the  
10 gang unit, but I can't quite recall that.

11 SAC DAVALLE: Okay. And this was prior to him  
12 becoming the director, obviously?

13 MS. LD : Yeah. Yeah.

14 SAC DAVALLE: Okay. And then when he became the  
15 director of LA IMPACT, did you have normal interaction with  
16 him, regular interaction, I should say, with him?

17 MS. LD : Not regular, no. He did --

18 SAC DAVALLE: Occasionally --

19 MS. LD : -- he didn't have a need to really be in  
20 the finance department --

21 SAC DAVALLE: Okay.

22 MS. LD : -- at that point before becoming the  
23 director.

24 SAC DAVALLE: But when he became director, then did  
25 you have --

11

1 MS. LD : Yes.

2 SAC DAVALLE: -- you had --

3 MS. LD : Yes.

4 SAC DAVALLE: -- regular interaction with him?

5 MS. LD : Great deal of interaction.

6 SAC DAVALLE: Okay.

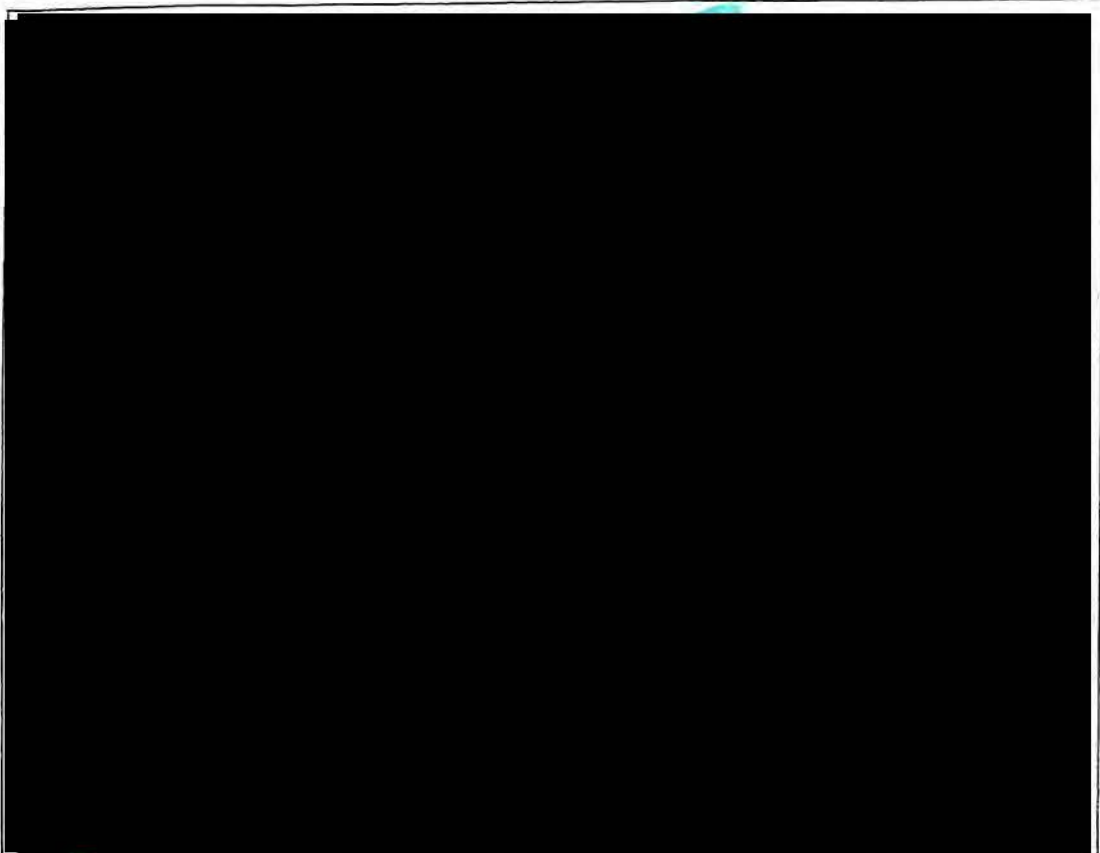
7 MS. LD : He's a very hands on kind of guy, very  
8 much a micromanager.

9 SAC DAVALLE: Okay. So he never supervised you  
10 though directly?

11 MS. LD : Not directly.

12 SAC DAVALLE: I think --  
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15 Except this last time that he came over we did it  
16 and then I had my cell phone on my coffee table over there.  
17 And we did it, we came out on the couch to have a little  
18 chitchat. He took my cell phone. He goes, oh, what's this.  
19 At the same time he held me down on the couch. And I  
20 started, you know, reaching for my cell phone, but he kept  
21 pushing me down.

22 And he kept looking at my -- because he had a phone  
23 like this at one time. He's very familiar with it. He  
24 looked at my -- my address book, he looked at all my text

34

1 And he determined there's a lot of guy's names on here. He  
2 says you -- you're -- you're seeing other people, aren't  
3 you, all the while holding me down. And I kept trying to  
4 reach for the phone, and I ripped his sleeve. I ripped his  
5 leave. And he -- he finally said, LD , I'm stronger than  
6 you are, stop now. Stop, just let me look through your  
7 phone. And I gave up. Because he was stronger.  
8 Complete -- very strong guy.

9 SAC DAVALLE: And when was this?

10 MS. LD : This was about -- now seven weeks ago  
11 was the last time I had sexual contact with him.

12 SAC DAVALLE: Is that normal? Is -- would you go  
13 those lengths of time between --

14 MS. LD : No.

15 SAS GAUTHIER: And the seven weeks ago was when he  
16 grabbed your -- your phone?

17 MS. LD : Yeah. It was October -- October 27th.  
18 Because I put it in my calendar when he was coming over.  
19 Just confirm that. That was the first time he's ever  
20 manhandled me, ever.

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[REDACTED]

MS. LD : Right.

Yeah, he came over around seven o'clock on the 27th of October. He said that he was supposed to take the guy -- the guy that took over LA IMPACT now, I don't know his name, he's a Hispanic guy, he was supposed to meet him here at the Brea mall right up the street. But he said he was going to visit me first and have that guy wait there for him.

But since we got into a scuffle over the phone he was a little late in meeting that guy. And the guy made a

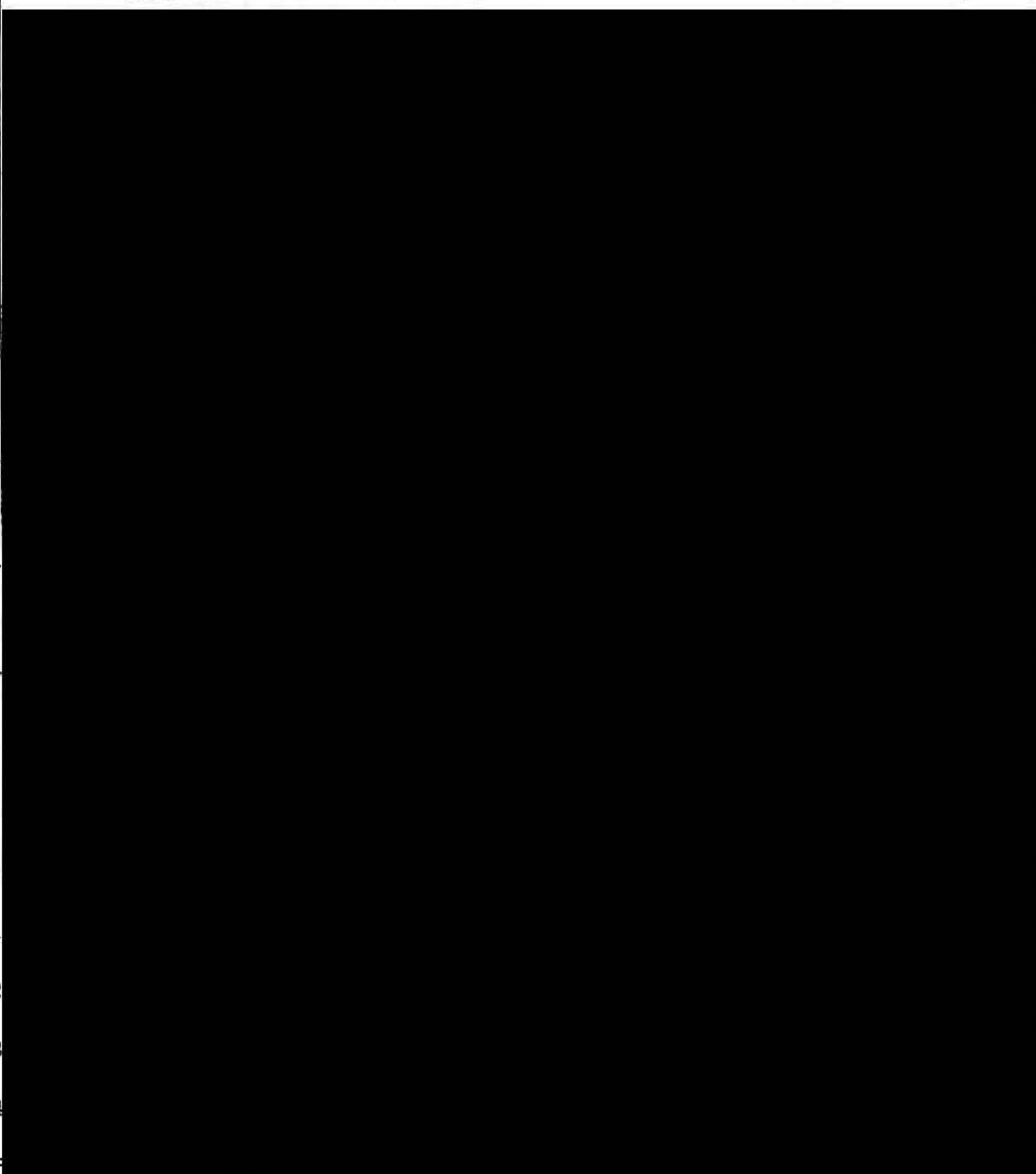
~~comment why -- you know, where have you been, you know. And~~  
he had -- Wil said he apologized about being late, he got tied up, that type of thing. And they were supposed to go to Santa Barbara, I believe, to one of the task forces there. He was taking the guy, showing the guy around.

SAC DAVALLE: I see. That was on October 27th. And since then have you had contact with him?

MS. LD : Well, like I said, you know, weeks went by. He called the office, was it two weeks ago, and called my office phone, which he never does. And, in fact, I -- I -- I know it was him. I -- I picked up the phone. I

1 answered it, you know, police administration. And he goes  
2 what up, dog, which -- usually how he talks to me, what up,  
3 dog. And I said who's this. Because, again, Wil never  
4 calls me at work.

5 SAC DAVALLE: Uh-huh.





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[REDACTED]

MS. LD : And he -- he -- he's -- you know, it -- it didn't make sense. He -- he says, oh, I caught you. I said caught me what. He says, well, you've got -- I think you're dating, I think you're seeing other people. I said, well, Wil, I think I can. And he's -- he got very angry.

SAC DAVALLE: Mm-hmm.

MS. LD : Very angry.

SAC DAVALLE: So he never told you you couldn't, but you just were under the impression that he didn't like it?

When he -- when he started going through your phone and you said he was holding you down, did you -- did you receive any injuries as a result of that?

~~MS. LD : Well, he held my -- my arm down, and my~~  
wrist was a little bit sore, a little sore, because he held me down for a while. And I was trying to just -- you know, I was leaning my body, and he was -- he said stop doing that. I'm stronger than you, just stop. And I was able to grab a sleeve, and I ripped it. I heard it rip. And he -- that's when he says just stop this, LD I'm stronger than you, you're not going to win here.

SAC DAVALLE: Do you remember the clothing he was wearing?

MS. LD : He was in a -- a -- a shirt and slacks,

1 just like kind of what you're wearing.

2 SAC DAVALLE: Like a --

3 MS. LD : Because he was -- he came --

4 SAC DAVALLE: -- dress shirt?

5 MS. LD : -- I guess what he wore to the office.

6 And then he -- he was going to meet this guy to take him.

7 SAC DAVALLE: So it would be like a long-sleeved

8 dress shirt like what I'm wearing?

9 MS. LD : Yeah, the long-sleeved dress shirt. And

10 I ripped his sleeve..

11 SAC DAVALLE: Okay. Do you remember the color

12 possibly?

13 MS. LD : I don't remember. I think it was white.

14 SAC DAVALLE: And then did you -- you told -- you

15 told him to stop, to let me -- let me go?

16 MS. LD : Yeah. I said stop -- you know, I said

17 what are you doing. He says just let me look through this,

18 let me look through this. And . . . But I kept, you know,

19 preventing him from doing that until he finally says I'm

20 stronger than you. I ripped his sleeve. He says just let

21 me look through it. And I gave up. I says, go ahead, look

22 through it.

23 SAC DAVALLE: And so then you just sat on the couch

24 and watched him go through the phone?

MS LD : I sat on the couch and watched him go



1 through all my stuff.

2 SAC DAVALLE: And then what happened?

3 MS. LD : He says, you know, you've got a lot of  
4 guys in here, I think you're dating. And I said, well, I  
5 think I can. You know, he says -- he just got mad. He got  
6 up and walked out.

7 SAC DAVALLE: Oh, so then he left?

8 MS. LD : He left.

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[REDACTED]

MS. LD : And -- and basically I didn't even know  
I was assaulted. He told me. And he's not happy about  
that.

SAC DAVALLE: Uh-huh.

MS. LD : I thought you had to hit somebody to --  
for it to be assault. I guess not.

[REDACTED]

MS.\* LD : But I don't want to see him anymore.

SAC DAVALLE: Sure.

[REDACTED]

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MS. LD : Okay.

SAC DAVALLE: Okay. Take care of the --

SAS GAUTHIER: With that --

SAC DAVALLE: -- yeah.

SAS GAUTHIER: Yeah, with that said, we will  
terminate the interview, and the time is 1504 hours.

---o0o---

1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2 ---000---

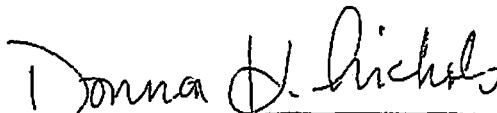
3  
4 I, DONNA K. NICHOLS, a Certified Shorthand Reporter in  
5 and for the State of California, duly commissioned and a  
6 disinterested person, certify;

7 That the foregoing pages were transcribed from CD  
8 recording;

9 That the statements of all parties made on the CD  
10 recording were thereafter transcribed into typewriting by me  
11 to the best of my ability;

12 That the foregoing transcript is a record of the  
13 audible statements of all parties made on the CD recording.

14  
15 Dated: ~~MARCH 2, 2010~~

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21 DONNA K. NICHOLS, RPR  
22 STATE OF CALIFORNIA  
23 CSR NO. 5660  
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STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL

TRANSCRIPTION OF RECORDED  
TELEPHONE CONVERSATION BETWEEN  
AND WILLIAM TELISH  
ON FEBRUARY 23, 2010, 1418 HOURS

TRANSCRIBED BY: DONNA K. NICHOLS, RPR, CSR. 5660

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AG0000175

1 MR. TELISH: Hello.  
2 MS. LD : Hey.  
3 MR. TELISH: Hello.  
4 MS. LD : Hello, can you hear me?  
5 MR. TELISH: What up?  
6 MS. LD : What are you doing?  
7 MR. TELISH: I'm working. What else am I doing?  
8 MS. LD : Well, did you forget to call me back?  
9 MR. TELISH: No. I've been on the phone.  
10 MS. LD : Oh, all right. Shit.  
11 MR. TELISH: You know what I'm saying? Got people  
12 attacking us and shit.  
13 MS. LD : Oh, okay.  
14 MR. TELISH: So what up?  
15 MS. LD : Anyway. Anyway, yeah, I want to talk to  
16 you before, you know, surgery and all that, and I understand  
17 you tried calling me or whatever, but the kids were over and  
18 stuff, so I don't even remember.  
19 But, anyway, what's going on with us? What -- you  
20 know, you coming over, what are you doing?  
21 MR. TELISH: Well, what's your condition?  
22 MS. LD : Well, my condition is I have two slices  
23 under my arm and it's healing, you know. And chemo will  
24 start the end of March. I mean that's my condition.  
25 MR. TELISH: Okay.

1 MS. LD You know, I mean I just don't know  
2 what's going on. You know, we don't see each other.  
3 MR. TELISH: Can you -- can you bust it up?  
4 MS. LD : Maybe. Yeah, I don't see why not.  
5 MR. TELISH: What do you mean maybe? Do you have to  
6 talk to your doctor?  
7 MS. LD : No. Well, what -- what does that part  
8 have to do with anything?  
9 MR. TELISH: Well, nothing. I just want to make sure  
10 you're all right.  
11 MS. LD : I'm okay. It just doesn't seem like  
12 you're really interested anymore, you know.  
13 MR. TELISH: I am. I just got to --  
14 MS. LD : You know, I guess --  
15 MR. TELISH: You know, it's not only your life, it's  
16 my life too, you know. I got to -- they got to coincide,  
17 you know. My life's -- your life's crazy, I'll give you  
18 that. So is mine.  
19 MS. LD : Well, I have to -- I mean you must have  
20 time. You must have time. You must be able to cut out some  
21 time. I can't imagine you not, you know.  
22 MR. TELISH: Well, I was kind of holding off to see  
23 where you're going.  
24 MS. LD : Oh, okay, well, that's -- that's how it  
25 is, you know.

1 MR. TELISH: Well, now I know.

2 MS. LD : Okay. Well (unintelligible) --

3 MR. TELISH: (Unintelligible).

4 MS. LD : -- you know, before -- well, definitely.

5 MR. TELISH: Yeah.

6 MS. LD : You know, even that's not going to get

7 me down. I understand I'm going to be tired for a few days,

8 that's about it, you know. It's every three weeks.

9 MR. TELISH: How long is that going to go on for?

10 MS. LD : About three months. It's not bad.

11 MR. TELISH: Three months?

12 MS. LD : Yeah.

13 MR. TELISH: Well, now, if they cut it all out, then

14 why do you have to do chemo?

15 MS. LD : Because of the type of cancer it was.

16 It was a grade three. It was aggressive. It's triple

17 negative. It's the only way you -- they -- it tends to come

18 back, you know.

19 MR. TELISH: Yeah.

20 MS. LD : So it's just -- they have to give me

21 some kind of treatment, and they -- they said that for this

22 kind of cancer that I had, it has to be chemo, that's why.

23 MR. TELISH: Yeah.

24 MS. LD : Yeah. I mean I got the worst cancer

25 that there is for -- for breast cancer, believe it or not,



1 so . . . And --

2 MR. TELISH: When do you know if you got it all out  
3 when they did the surgery?

4 MS. LD : Well, I go to the oncologist next month,  
5 and -- I don't know what they're going to do. I mean the --  
6 the breast surgeon said she got it all out, you know, but  
7 I've been reading books and stuff that say that even if it's  
8 not in the nodes -- but that particular kind of cancer, that  
9 sometimes it can get into the blood vessels of the breast,  
10 you know, and stuff like that. And -- I mean it just --  
11 it's -- it's really weird, but -- they just want to be  
12 doubley sure, that's all, you know.

13 MR. TELISH: Is that right?

14 MS. LD : Yeah. Yeah. I mean I hate to have to  
15 go through all that, but if that's what it takes, you know,  
16 then so be it. You know, what am I going to do, so . . .

17 MR. TELISH: So you're not going to -- you're not  
18 going to have to hack off any tittage, right?

19 MS. LD : They still want to do that because I  
20 have the breast cancer gene.

21 MR. TELISH: So what are you going to do there?

22 MS. LD : I'm going to do a double mastectomy at  
23 the end of the year with -- with reconstruction and they'll  
24 put implants in. They're going to -- they're going to take  
25 some muscles out of my back and -- and build up the chest

1 wall area then and then put an implant -- implants on top of  
2 it --

3 MR. TELISH: Ah.

4 MS. LD : -- and sew me up.

5 MR. TELISH: Are you going to get some big boys?

6 MS. LD : Well, we've had this discussion. The  
7 highest they can go is like a big C.

8 MR. TELISH: Oh, that's right. Yeah, you told me  
9 that.

10 MS. LD : Yeah, so . . . I mean that's fine..  
11 They're going to be perky, you know. That's kind of cool,  
12 you know.

13 MR. TELISH: Right.

14 MS. LD : Right now they kind of hang and stuff,  
15 but -- I've been looking at pictures online and stuff, and  
16 they -- they do a pretty decent job, you know.

17 MR. TELISH: Yeah.

18 MS. LD : Yeah. So . . .

19 MR. TELISH: And insurance pays for all that?

20 MS. LD : Yeah. They can't leave you without  
21 breasts. They have to do something. Can you imagine how  
22 much --

23 MR. TELISH: Wow.

24 MS. LD : -- this is all costing? Can you  
25 imagine?

1 MR. TELISH: Oh, fuck. They're probably like  
2 \$100,000.

3 MS. LD : Well, one drug -- one chemo drug alone  
4 is 100,000. And they're probably going to give me two or  
5 three. And that's not counting, you know, hospitalization  
6 and all that shit, you know.

7 MR. TELISH: Right.

8 MS. LD : And anyway. Yeah, but, anyway, you  
9 know, I'm just -- I wanted to talk, and I wasn't sure what  
10 was going on with us, and --

11 MR. TELISH: Yeah, well, it's all good.

12 MS. LD : I'm not too thrilled about -- I'm not  
13 too thrilled about you having pictures and shit, because --  
14 first of all, it's not going to look like me anymore pretty  
15 soon.

16 MR. TELISH: Well, do you want me to get rid of them?

17 MS. LD : Well, yeah, because, you know, you had  
18 them for when, you know, that investigation was going on and  
19 all that and, you know, you're going to put them on the  
20 Internet or whatever you were going to do with them. I  
21 don't know what you were going to do with them. But that's  
22 all over. So --

23 MR. TELISH: I can do -- if what you want, I'll get  
24 rid of it.

25 MS. LD : I would like to -- I would like you to

1 get rid of them, you know.

2 MR. TELISH: All right (unintelligible).

3 MS. LD : How -- how do I know if you -- if you  
4 have? I mean . . .

5 MR. TELISH: Well, I'm going to tell -- tell you I  
6 did.

7 MS. LD : (Unintelligible). What?

8 MR. TELISH: Well, I'm going to tell you I did. Do  
9 you want me to give you the -- do you want me to give you  
10 the disc and you can do whatever you want with it?

11 MS. LD : Yeah.

12 MR. TELISH: Okay.

13 MS. LD : You know. You don't need them anymore,  
14 you know.

15 MR. TELISH: Okay, fair enough.

16 MS. LD : What's done -- it's done its duty.

17 MR. TELISH: There is --

18 MS. LD : Deposition's over. They're -- you know,  
19 nothing's going on.

20 MR. TELISH: All right, I'll give them to you.

21 MS. LD : All right. And that's it. You know,  
22 and the other thing too, remember when you came over and the  
23 last time, and -- why did you look through my phone? What  
24 was that all about?

25 MR. TELISH: I don't know. I don't remember.

1 MS. LD : It was -- my phone was on my table. Why  
2 did you go through it for? You just picked it up.

3 MR. TELISH: I don't know.

4 MS. LD : And started looking through everything.  
5 Remember that? And I -- and I was trying to get it away  
6 from you.

7 MR. TELISH: Oh, and I caught you talking with Pervis  
8 (phonetic)?

9 MS. LD : Well, you know, I was -- you picked up.  
10 the phone. I wasn't even doing anything.

11 MR. TELISH: No, I think the phone rang, and --

12 MS. LD : No, it didn't.

13 MR. TELISH: Or it texted or something. Something  
14 buzzed on it.

15 MS. LD : No. It was just sitting on my -- by my  
16 table. You -- you walked in --

17 MR. TELISH: No, I didn't read -- I can't remember --  
18 I can't remember what the reason was. But there was a  
19 reason why I drew my attention to it.

20 MS. LD : Well, you picked -- regardless --

21 MR. TELISH: (Unintelligible).

22 MS. LD : -- you picked it up and you looked  
23 through it. Remember that? I was trying to get it away  
24 from you and you -- what the hell, you held me down. What

00003391 25 the fuck.. What kind of behavior is that? I don't

1 want you doing that kind of shit anymore to me.

2 MR. TELISH: Okay.

3 MS. LD : You know, I want there to be more trust.

4 MR. TELISH: Well, okay, then you need to stop

5 bullshitting me and lying, and you'll be trusted.

6 MS. LD : Lie about what?

7 MR. TELISH: You just flat out lied to me while I was

8 on the phone.

9 MS. LD : Well, you tell me that -- to stop

10 fighting with you. Remember? You said that you'll let go

11 of me if I tell you what's going on. So I did, right?

12 MR. TELISH: Right. And I had to do that, didn't I?

13 MS. LD : You said -- you said -- you said --

14 MR. TELISH: Why did you put up such a fuss? Why did

15 you try to -- why did you try to hide it?

16 MS. LD : Because it was none of your business to

17 go through my phone. How would you like it if I did that to

18 you?

19 MR. TELISH: You can go through my phone.

20 MS. LD : You -- bullshit, you won't let me do

21 that.

22 MR. TELISH: You want to bet?

23 MS. LD : Oh. We need to have more --

24 MR. TELISH: You're just mad because you got caught,

25 that's all. You got caught, and you're mad about it. And

10

1 you're -- and you're worried that I may catch you again,  
2 that's why you're bringing this up.

3 MS. LD : Oh, please. How did -- did I -- did I  
4 rip that shirt of yours? I think I did. Didn't I?

5 MR. TELISH: You did.

6 MS. LD : Oh, shit. Well, did you have to get it  
7 fixed?

8 MR. TELISH: Yeah.

9 MS. LD : Uh oh.

10 MR. TELISH: Now, what kind of behavior is that?

11 MS. LD : You were holding me down on the couch.  
12 I was trying --

13 MR. TELISH: And why was I doing that?

14 MS. LD : Because you were -- you were trying to  
15 look through my phone.

16 MR. TELISH: And why was I doing that?

17 MS. LD : Because you thought that I was seeing  
18 somebody.

19 MR. TELISH: And I was right, wasn't I? And you lied  
20 about it. And you even lied about it when I had you caught.

21 MS. LD : Oh, brother.

22 MR. TELISH: Yeah, oh, brother is right.

23 MS. LD : Well, this --

24 MR. TELISH: So it sounds like I was pretty  
25 justified, doesn't it?

1 MS. LD : Well, I don't know about that. No,  
2 that's not right. Anyway, I don't want that kind of  
3 behavior anymore between us, all right?  
4 MR. TELISH: All right, well, like I said, don't lie  
5 to me and bullshit me and I won't -- you won't have it.  
6 MS. LD : Well, and I don't want you to lie to me  
7 either, you know.  
8 MR. TELISH: Well, fuck, fair enough. We're not  
9 talking about me lying right now, it's about you.  
10 MS. LD : Well, but it goes both ways.  
11 MR. TELISH: Well, goo, ba, wa --  
12 MS. LD : Since we're on --  
13 MR. TELISH: That's right.  
14 MS. LD : -- on the subject, it goes both ways.  
15 MR. TELISH: If you were to ask me, I would tell you  
16 what's up. You did not when I asked you.  
17 MS. LD : Well, but you're a good liar. You even  
18 said, you know, you're a good UC.  
19 MR. TELISH: Come on.  
20 MS. LD : You know.  
21 MR. TELISH: Okay -- okay, let's say that's all true.  
22 Did that mitigate what you did?  
23 MS. LD : What? Some guy texted me?  
24 MR. TELISH: Oh, and --  
25 MS. LD : And then you ask me about it?



1 MR. TELISH: Well, you not -- if it's such a no --  
2 non-issue, then why did you make such a big issue about it?  
3 Because you didn't want me to figure out that you were  
4 playing fucking chee chee guchi with this dude and in case  
5 you phoned him. Am I right or am I right?

6 MS. LD : All right. Yeah, do you believe me if I  
7 tell you I haven't boned him anymore?

8 MR. TELISH: Well, if that's what you say, that's  
9 fine.

10 MS. LD : All right.

11 MR. TELISH: All right. But you're just -- you're a  
12 little chagrinned, and that is the correct adjective,  
13 because I caught you. That's all. So don't be upset. The  
14 only reason why I caught you is because I knew something was  
15 up and I had to figure out whether it was true or not.

16 MS. LD : But don't ever hold me down like that.  
17 That's not nice. You don't do that to people you care  
18 about. It's just --

19 MR. TELISH: Well, true. True. True. And you don't  
20 do -- you don't lie and push on people that you care about  
21 either.

22 MS. LD : No, I -- sometimes I wonder if -- I  
23 sometimes wonder if -- if you're doing stuff with other  
24 people, you know.

25 MR. TELISH: Why do you wonder that? What -- what --

1 what possible reason do you have for thinking that?

2 MS. LD : Because if you've done it with me, you  
3 might do it with other people.

4 MR. TELISH: Well, I can't control that. So I can't  
5 control me -- because of that, you think that, I mean I  
6 can't -- what do I say to that? I can't control any of  
7 that.

8 MS. LD : Control what, the way I'm thinking?

9 MR. TELISH: I can't -- yeah. It's nothing that I  
10 did.

11 MS. LD : No. I mean we're certainly not --

12 MR. TELISH: You're -- you're pedal --

13 MS. LD : -- seeing each other very much anymore.

14 MR. TELISH: You're -- well, there's a lot of --  
15 there's some good reasons for that, don't you think?

16 MS. LD : Because of your -- your wife?

17 MR. TELISH: Don't you think that's a pretty good  
18 reason?

19 MS. LD : Yeah, but I mean -- you -- you can't  
20 tell me that since October you have not had an opportunity  
21 to come and see me. You can't tell me that.

22 MR. TELISH: Well, I -- okay, let me just say this.  
23 We got the holidays. Right after the holidays you hit me  
24 with this cancer thing.

25 MS. LD : Yeah.

1 MR. TELISH: You know, I mean it was bad for me too.  
2 You know, and for me, you know, the longer I keep her calm  
3 the better off things are going to be for me in the future,  
4 so . . . That's how I looked at it. So, yeah, okay, had  
5 there been a possibility I could have one -- yeah, of  
6 course. You know. However, you know, I was trying to keep  
7 things cool.

8 But what does that have to do with me doing it with  
9 somebody else?

10 MS. LD : Well, I'm just saying you don't want me  
11 to lie to you, but there's always the possibility of you  
12 doing it with other people because you're not doing it with  
13 me.

14 MR. TELISH: Well, there's always that possibility  
15 that you're doing it with other people because you're not  
16 doing it with me. So we're at a stalemate, aren't we?

17 MS. LD : I guess we are.

18 MR. TELISH: In fact, you're in more of a position to  
19 do it with other people than I am, aren't you?

20 MS. LD : Well, I'm not married. That's right.

21 MR. TELISH: There you -- that's right.

22 MS. LD : Yeah.

23 MR. TELISH: So I should have more of a fear than  
24 you, shouldn't I?

25 MS. LD : Well, now, you know with this thing

1 going on --

2 MR. TELISH: And then I caught you on top of that --

3 MS. LD : Oh.

4 MR. TELISH: -- after you told me -- after you told  
5 me you were doing nothing.

6 Am I right?

7 MS. LD : Yeah.

8 MR. TELISH: All right. So if anyone should have  
9 some sort of an insecurity issue, it should be me. But I  
10 don't because I believe you. (Unintelligible) page into my  
11 book, huh?

12 MS. LD : Well, we've been through a whole hell of  
13 a lot. I've been -- I've always been there for you, you  
14 know that.

15 MR. TELISH: Yeah. That's true.

16 MS. LD : We've been -- we've been lovers for a  
17 long time. And then I told the girls about us, and that  
18 created a mess and, you know --

19 MR. TELISH: Yeah, that's true. Who fucked that one  
20 up.

21 MS. LD : You -- you -- you -- you coached me on  
22 what to say to Rick Law. But then you had those pictures  
23 that you were going to put on the Internet or whatever you  
24 were going to do with them, so -- but all that is over with  
25 and --

1 MR. TELISH: I don't know what you're talking about.  
2 MS. LD : Well . . .  
3 MR. TELISH: But I'll tell you this. You know, it's  
4 all good.  
5 MS. LD : All right. I just -- I mean how can we  
6 be friends, you know. You're -- you're like -- shit. You  
7 do stuff that just pisses me off.  
8 MR. TELISH: I do?  
9 MS. LD : Yes, you do.  
10 MR. TELISH: Like what?  
11 MS. LD : Well, what we just talked about. You  
12 know, we've got to act more like friends.  
13 MR. TELISH: Well --  
14 MS. LD : More like --  
15 MR. TELISH: Well, then you got to stop bullshitting  
16 me.  
17 MS. LD : -- (unintelligible).  
18 MR. TELISH: -- and fucking being deceitful. Friends  
19 don't do that to friends now, do they? Do you see the  
20 common denominator here?  
21 MS. LD : What?  
22 MR. TELISH: You are the one that's creating your own  
23 problems. You are the one that's creating these issues.  
24 MS. LD : Hmm.  
25 MR. TELISH: Don't you agree with that?

1 MS. LD : I've got to think about that one.

2 MR. TELISH: I mean who -- you know, who went and  
3 talked to everybody?

4 MS. LD : Well, I was not handling the  
5 relationship --

6 MR. TELISH: Yeah.

7 MS. LD : -- very well, okay?

8 MR. TELISH: That's right. And then who -- you know,  
9 and again, you know -- a lot of this is, you know, you're  
10 creating your -- your issue here. You know, you're saying I  
11 do things that piss you off like, you know, the phone thing.  
12 Well, okay, good enough. But you have to look at why I did  
13 it. I didn't do it just because I thought I'd be an  
14 asshole. Right?

15 MS. LD : Well, I don't know.

16 MR. TELISH: You were trying to pull a fast one on  
17 me. And I was hip to it, that's all.

18 MS. LD : Well, I don't know. I don't know.

19 MR. TELISH: You know, that's all it was. You have  
20 to -- the only person to blame on that one is yourself.  
21 Because had you not done that I would have never done what I  
22 did. Does that make sense?

23 MS. LD : I guess. We've had this discussion  
24 before, I think.

25 MR. TELISH: So . . . I know we have.

1 MS. LD : Well, I know. Okay. Well, let's try to  
2 be, you know, more -- I will -- I promise to be more of a  
3 friend, and you too, okay?

4 MR. TELISH: Yeah, have to be forthcoming. I told  
5 you. You're single. You know, look, if you decide you're  
6 going to go bang somebody else, that's -- you know what, I  
7 mean, look, I have no choice but to be okay with it. You  
8 know, but what I'm not okay with is you bullshitting me on  
9 it.

10 MS. LD : Okay.

11 MR. TELISH: That is unequivocal.

12 MS. LD : All right. All right.

13 MR. TELISH: You know, I have to be reasonable here,  
14 you know.

15 MS. LD : All right. Fair enough.

16 MR. TELISH: So, you know. And I don't think it's  
17 going to be like you're out banging fucking every Tom, Dick  
18 and Harry out there --

19 MS. LD : No.

20 MR. TELISH: -- I know that.

21 MS. LD : No, no, no.

22 MR. TELISH: I know -- that's my point. That's why  
23 you -- that's kind of when you do lie to me, then it makes  
24 me think, well, what the fuck don't I know. What more  
25 didn't I catch.

1 MS. LD : I know. I know. I -- I understand  
2 that. But . . . All right.  
3 MR. TELISH: So you got to (unintelligible), Cuz.  
4 MS. LD : Well, when am I going to talk to you  
5 next?  
6 MR. TELISH: Yeah, you're so --  
7 Well, when are you going back to work again? You  
8 said tomorrow?  
9 MS. LD : Yeah, but when are you going to the  
10 mountains? Like can you call me before then or not? Are  
11 you going like on a Friday or something?  
12 MR. TELISH: Yeah. Yeah, I'll probably call  
13 Thursday. I'm going Friday.  
14 MS. LD : You're coming back Sunday or something?  
15 MR. TELISH: Yep.  
16 MS. LD : That's cool. Are the kids going to  
17 play, you know, in the snow and all that crap?  
18 MR. TELISH: Yeah.  
19 MS. LD : That's cool. That will be fun for them.  
20 MR. TELISH: (Unintelligible).  
21 MS. LD : All right. Then call me -- if you  
22 can --  
23 MR. TELISH: I will.  
24 MS. LD : -- call me Thursday, that would be nice.  
25 MR. TELISH: All right, I will.



1 MS. LD : I want to talk to each other more often,  
2 okay?  
3 MR. TELISH: All right. No problem.  
4 MS. LD : All right.  
5 MR. TELISH: I got to roll.  
6 MS. LD : Okay.  
7 MR. TELISH: Later.  
8 MS. LD : Bye.  
9 (End of recording).

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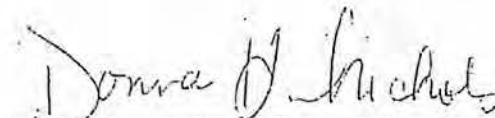
3  
4 I, DONNA K. NICHOLS, a Certified Shorthand Reporter in  
5 and for the State of California, duly commissioned and a  
6 disinterested person, certify;

7 That the foregoing pages were transcribed from CD  
8 recording;

9 That the statements of all parties made on the CD  
10 recording were thereafter transcribed into typewriting by me  
11 to the best of my ability;

12 That the foregoing transcript is a record of the  
13 audible statements of all parties made on the CD recording.

14  
15 Dated: MARCH 17, 2010  
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20 

21 DONNA K. NICHOLS, RPR  
22 STATE OF CALIFORNIA  
23 CSR NO. 5660  
24

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STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL

**CERTIFIED COPY**

TRANSCRIPTION OF RECORDED INTERVIEW  
OF WILLIAM TELISH  
ON APRIL 5, 2010

TRANSCRIBED BY: DONNA K. NICHOLS, RPR, CSR. 5660

1 MS. SEIDMAN: If you could just say your name and  
2 like count to five or something.

3 MR. TELISH: William Telish, one, two, three, four,  
4 five.

5 MS. FOWLER: Bill, could you just make sure your  
6 voice gets picked up.

7 MR. HADDEN: Bill Hadden.

8 MS. FOWLER: Thank you.

9 MS. SEIDMAN: Barbara Seidman, one, two, three, four,  
10 five.

11 MS. FOWLER: I'm Alicia Fowler.

12 MS. SEIDMAN: I'm Supervising Deputy Attorney General  
13 Barbara Seidman. This is -- what's your title Alicia?

14 MS. FOWLER: Senior assistant Attorney General.

15 MS. SEIDMAN: -- Alicia Fowler. And this interview  
16 is being recorded at 300 South Spring Street, Los Angeles,  
17 California. The date of the interview is April 5th, 2010,  
18 and the time is 10:15 a.m.

19 Present in this room are Alicia Fowler, Wil Telish,  
20 Bill Hadden and myself, Barbara Seidman.

21 Mr. Telish, you are being questioned as a result of  
22 an administrative investigation. This investigation is  
23 being conducted at the request of the director of the  
24 Division of Law Enforcement of the Department of Justice.  
25 The Division of Law Enforcement, Professional Standards

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13 MS. SEIDMAN: Okay. And then did you attempt to look  
14 at her cell phone contacts that night?

15 MR. TELISH: No. I -- I -- one of the guys that she  
16 had been having an affair with e-mailed her or texted her,  
17 and I attempted to look at that.

18 MS. SEIDMAN: So was that against her wishes?

19 MR. TELISH: Yes and no. What happened there was I  
20 was sitting on the couch, I was eating popcorn -- was eating  
21 something, watching TV. And my phone and her phone was on  
22 the table there. And the phone went off. I -- and I'm  
23 just -- I'm looking at the TV, I'm paying -- I grab it, I  
24 look, and it's her phone, and I could already see it's some  
25 guy sent her a risque message. So I wanted to see what it

1 was.

2 So I go to look at it. She sees that I'm looking at  
3 it, she panics, runs over there. And I'm like -- and I'm  
4 like, hey, I want to see what this is. So it was one of  
5 these things. It was like, hey, hold on a second, what is  
6 this. And she's climbing --

7 MR. HADDEN: Indicate for the record just what you  
8 did.

9 MR. TELISH: Oh, I was like -- I was -- I -- she  
10 was -- she jumped on me, and I pushed her off, I'm like I'm  
11 doing -- I'm -- I'm holding the phone over here and I'm kind  
12 of going, hey, what is this, who is this.

13 MR. HADDEN: And you're extending your right hand --

14 MR. TELISH: I'm extending my right hand --

15 MR. HADDEN: -- as if to keep somebody away from you.

16 MR. TELISH: Right. Right. I'm trying to push her  
17 away from me. She's trying to grab the phone. And -- and  
18 I'm like, hey, what is this, you know. And she's like it's  
19 nothing, it's nothing. And I'm like, well, let me see it  
20 then. And I couldn't see it because she's grabbing my arm  
21 and she's pulling on my shirt and everything.

22 So then she starts getting mad and she's like, hey, I  
23 want my phone, give me my phone right now. So I did. I --  
24 I gave her her phone. And I told her, I said, hey, look, I  
25 go if you're seeing somebody else, I need to know that.

1 And -- and I said, you know, you don't have to tell me if  
2 you don't want to, but if you have any -- you know, any  
3 inclination of seeing me, then I need to know who this is.

4 And she did. She gave it back to me, she sat on the  
5 couch with me, and we actually looked at it together. And  
6 it turned out that she was having a relationship with one of  
7 the dispatchers at Placentia PD, and they had been texting  
8 back and forth, and that's what it was.

9 So after that incident, you know, she was very  
10 dejected, she said she's not going to want to see me  
11 anymore. And I was -- I told her, I said -- I go, look.  
12 And I -- I played -- I said I'm married, you know, just  
13 because I can't see anybody, you are not. If that's what  
14 you want to do -- I can't see you all the time. If you want  
15 to have a relationship, that's up to you. I just want the  
16 courtesy of knowing who it is.

17 And so she seemed to be okay with that. And that's  
18 how that incident went down.

19 MS. SEIDMAN: You didn't struggle with her over the  
20 cell phone, the possession of the cell phone?

21 MR. TELISH: I -- I mean -- I'm not sure how you're  
22 characterizing struggle, I mean --

23 MS. SEIDMAN: Did you hold her down while she was  
24 trying to get at the --

25 MR. TELISH: No, I was --

1 MS. SEIDMAN: -- the cell phone?

2 MR. TELISH: No. I had my back turned to her, and I  
3 was -- I was -- I was holding the cell phone out here, and I  
4 was kind of --

5 MR. HADDEN: Extended -- extended the left arm.

6 MR. TELISH: -- my left arm -- I -- I extended my  
7 left arm with the cell phone trying to read it, and I'm  
8 holding it with my right and she's climbing on me and -- you  
9 know, at first it was playful. But then she started getting  
10 mad. And then -- that's why she's -- and, you know, she  
11 said it in such a tone that she wanted the cell phone.  
12 Well, I got to get -- I gave her the cell phone.

13 And, you know, she'll tell you that. I mean she  
14 should tell you that that's how it went down. Because she  
15 actually sat with me after that and looked at it.

16 MS. SEIDMAN: Did -- was it after you told her that  
17 you were stronger than her and she just needs to sit there  
18 while you look through the -- her cell phone, that she can't  
19 get on you because you're stronger?

20 MR. TELISH: I never said -- I don't think I ever  
21 said anything about being stronger. I'm like -- I just -- I  
22 kept -- you know, I remember saying, hey, I want to see who  
23 this is, what it --

24 MS. SEIDMAN: It's not worth -- worth it for her to  
25 fight you because you're stronger than she is?



1 MR. TELISH: I -- I -- I don't think I said -- I  
2 don't ever remember saying anything like that. It was  
3 basically, hey, I want to see who this is, who is this, what  
4 is this. You know, and I'm trying to read it, and I can  
5 sort of -- I can see that it's something. But you know how  
6 those texts are, they start off, and you can't read the  
7 whole thing.

8 MS. SEIDMAN: Why did you want to read it?

9 MR. TELISH: Because it was very apparent to me that  
10 she was having some sort of a relationship with somebody.  
11 You got to understand, LD purported to me the whole time  
12 that, you know, she was waiting for me. And I knew that  
13 wasn't true. I knew that wasn't true because of places that  
14 she went and things that she did and some of the people that  
15 she hung out with.

16 I also knew it wasn't true because she alluded to me,  
17 you know, that she was seeing the Placentia police chief,  
18 you know. And she didn't come out and say it, but, again,  
19 she alluded it.

20 So when I saw this message, I didn't know who that  
21 person was. And I mean it could have been anybody. But I  
22 knew that it wasn't a casual contact. So I wanted to know  
23 the nature of it. It was more my curiosity more than  
24 anything.

25 Because, again, she always purported to me that she

1 was not seeing anybody and waiting around for me and that,  
2 you know -- that's what she was doing, she was being loyal  
3 waiting for me. And I wasn't seeing her type of thing.

4 Because she told me that in phone conversations when  
5 she wanted to get me over there in October. You got to  
6 remember I hadn't seen her all year. And, you know, I was  
7 trying to be nice to her and talk to her on the phone. And  
8 I -- and -- and again, I did something I shouldn't have  
9 done, I led her to believe that I was going to see her at  
10 some point, you know, and I didn't. And so she was saying,  
11 you know, I'm waiting, I'm waiting for you. Well, the fact  
12 of the matter is I knew that she hadn't been. But now I --  
13 that was proof that she hadn't been. And so that -- that  
14 was why I wanted to see it.

15 MS. SEIDMAN: So do you -- do you deny that there --  
16 that you held her down, that you physically held her down  
17 that night?

18 MR. TELISH: I do.

19 MS. SEIDMAN: Okay. Do you deny that there was any  
20 sort of a physical struggle between the two of you that  
21 night?

22 MR. TELISH: Well, if you can -- if you can  
23 characterize her jumping at my back and her -- trying to get  
24 her off me, there's a physical struggle, then, yeah, I guess  
25 it was a physical struggle. But, you know, and -- and we

1 fell onto the couch.

2 But I never pinned her down. I mean I -- I couldn't  
3 because I was trying to read the message. You know, she --  
4 I think ripped my shirt that night, you know. She was --  
5 because she later apol -- she did rip my shirt. I had to  
6 get my shirt fixed.

7 And so -- and she -- and she later, you know,  
8 acknowledged that and apologized for it. And I'm like, hey,  
9 you know, this happened, this, because you weren't honest  
10 with me, you know. I said I don't care if you see this  
11 person. But don't tell me you're not when it's happening.  
12 And that was kind of the gist of how that conversation went  
13 down. So it wasn't like -- it wasn't like I sat there and,  
14 you know, put my hand around her neck and held her there, it  
15 just didn't happen. You know, she -- she was trying to get  
16 the phone out of my hand.

17 And again, it started off as playful, and then --

18 MS. SEIDMAN: But then what -- did -- then did it  
19 turn into something else?

20 MR. TELISH: She was getting angry, you know.

21 MS. SEIDMAN: But you didn't -- you didn't hold her  
22 down and keep her away from that cell phone while you were  
23 looking at it?

24 MR. TELISH: Okay, I kept her away from the cell  
25 phone, you know. But if I remember correctly, I remember

1 turning away from her, because I was sitting on the couch  
2 and she was not. She had been over by the kitchen. And she  
3 came running over to me. So when I turned, I remember I --  
4 I -- I could have been kneeling on the couch or, you know,  
5 bracing on the couch. But, you know, again, no, I would not  
6 characterize it as that at all. I would characterize it as  
7 me holding it at bay, her climbing on me, me trying to hold  
8 the phone away while -- while reading it. That's -- that's  
9 how I would characterize it.

10 And when she got angry, and I noticed she got angry  
11 enough, you know, I said here, here's the phone. And the  
12 reason why I did that is because I didn't care. You know, I  
13 wasn't going to make that big of a deal out of it. She  
14 obviously had a lot of motive for me not to see that. And  
15 so she was very angry.

16 And then she went from being angry to dejected.  
17 Because now -- she flat out said it, she says you're not  
18 going to want to see me now because of this. You know, and  
19 I told her, I said that's not true, you know -- and I gave  
20 her, like I told you, the spiel of, hey, look, you know,  
21 you're not -- you're -- you're a single woman. You know, if  
22 you're going to do this, then go ahead. Because it -- the  
23 mantra over the whole 2009 was I am waiting for you, I'm not  
24 seeing anybody, and I just knew it wasn't true. At least I  
25 suspected it anyway.

1 MS. SEIDMAN: So how long was the incident of where  
2 her phone first went to the end of where you looked through  
3 it and she sat there? How long of a period was that?

4 MR. TELISH: Two minutes. And we talked about it  
5 for, you know, ten or 15 afterwards, if that, then I left.  
6 That was it. In fact, I was getting ready to leave. I was  
7 eating something when that happened, and it -- you know,  
8 ended up staying later, and then I left.

9 MS. SEIDMAN: So you -- so again, you would not agree  
10 that you overpowered her in that circumstance?

11 MR. TELISH: No, I would not.

12 MS. SEIDMAN: Okay. And you never told her that it  
13 was because you were stronger than she was?

14 MR. TELISH: I don't remember saying anything like  
15 that.

16 MS. SEIDMAN: And you don't agree that you physically  
17 restrained her or held her down so that you could look  
18 through the cell phone?

19 MR. TELISH: Well, I mean, again, if you say  
20 physically restrained by holding her back, yeah, I guess I  
21 did. You know, it's all how you want to characterize it.

22 MS. SEIDMAN: Do you think it frightened her?

23 MR. TELISH: No. I know it didn't. She got angry  
24 with me. Like I said, it was playful at first, and then she  
25 got angry, and then she was remorseful. That's the range of

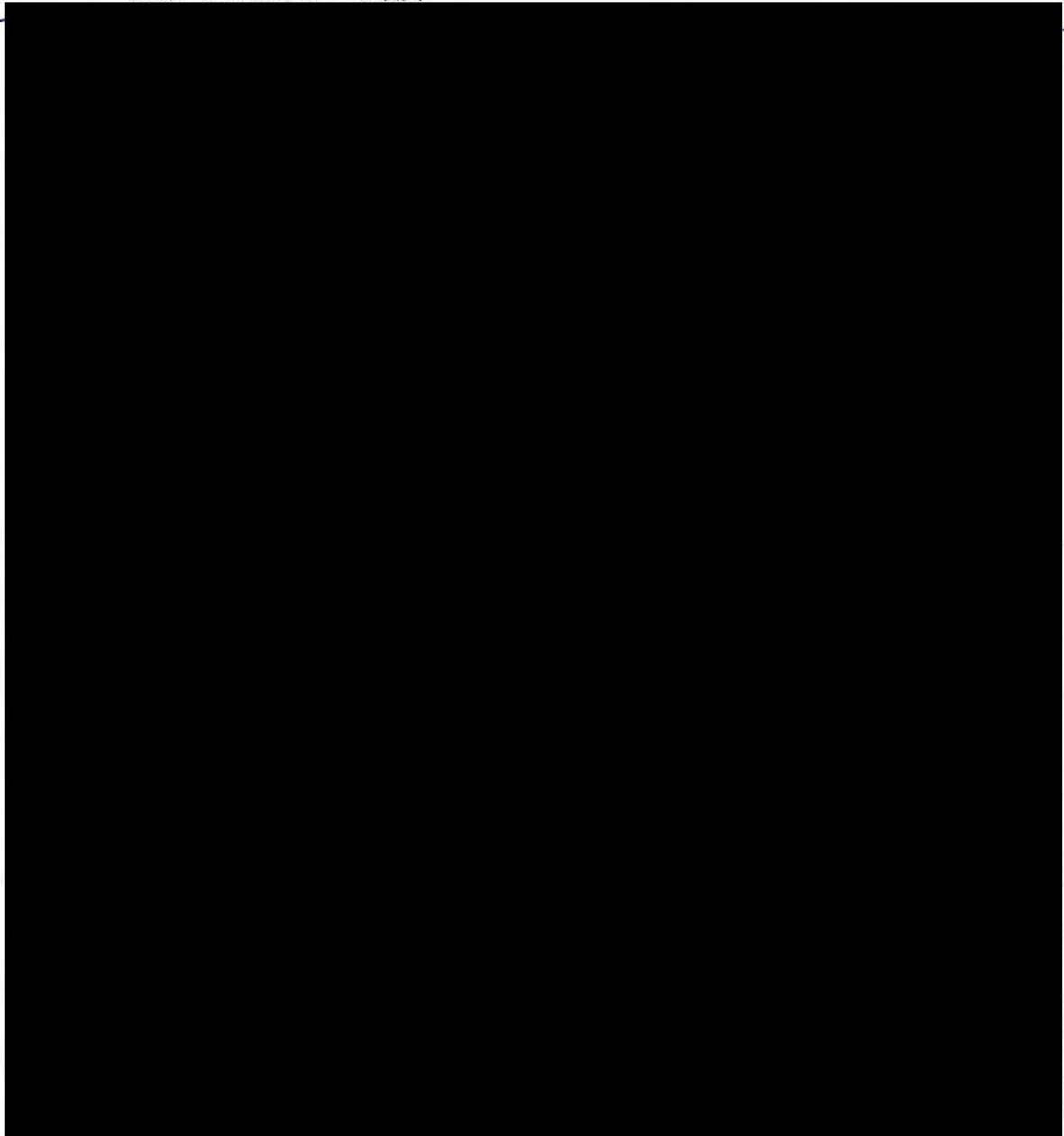
1 her emotions on that.

2 MS. SEIDMAN: And then you left right after that and  
3 you went right to Santa Barbara, correct?

4 MR. TELISH: Mm-hmm.

5 MS. SEIDMAN: Okay, drove to Santa Barbara?

6 MR. TELISH: Yes.



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DIVISION OF LAW ENFORCEMENT  
CALIFORNIA DEPARTMENT OF JUSTICE

DLE EXECUTIVE REVIEW TRANSMITTAL

Name of Employee: William Telish PS No.  
Classification: Senior Special Agent in Charge ARO No.  
Bureau: Division of Law Enforcement  
Assignment: Bureau of Narcotic Enforcement  
Los Angeles Regional Office  
5700 South Eastern Avenue  
Commerce, CA 90040

Recommendation: Dismissal

First Level: Bureau Chief

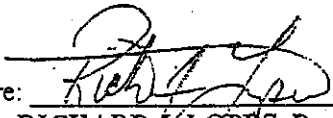
COMMENTS: ☒ Approve  
☐ Disapprove  
☐ Modify to \_\_\_\_\_

Signature:   
JOHN GAINES, Bureau Chief  
Bureau of Narcotic Enforcement

Date: 5/20/10

Second Level: Deputy Director

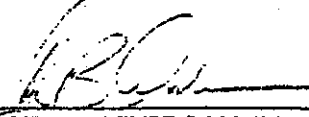
COMMENTS: ☒ Approve  
☐ Disapprove  
☐ Modify to \_\_\_\_\_

Signature:   
RICHARD J. LOPES, Deputy Director  
Division of Law Enforcement

Date: 5/20/2010

Third Level: Director

COMMENTS: ☒ Approve  
☐ Disapprove  
☐ Modify to \_\_\_\_\_

Signature:   
GEORGE B. ANDERSON, Director  
Division of Law Enforcement

Date: 5/20/10

DOJ - 002054

AG0000209

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August 2, 2010

Mr. William Hadden, Attorney at Law  
Silver, Hadden, Silver, Wexler & Levine  
1428 Second Street  
Santa Monica, CA 90401

RE: Skelly Hearing – William Telish

Dear Mr. Hadden:

At your request, on July 30, 2010, I conducted a Skelly Hearing for Senior Special Agent in Charge William Telish, Division of Law Enforcement, Bureau of Narcotic Enforcement. This hearing was conducted in order to afford William Telish his rights in accordance with Government Code Section 19574 and State Personnel Board (SPB) Rule 52.3, with regard to his dismissal from state service penalty. Also in attendance taking notes was Associate Personnel Analyst Shaun Esfandiary, Division of Administrative Support (DAS), Personnel Programs.

The reasons for the dismissal from state service are specifically stated in the Notice of Adverse Action that was served to William Telish. Mr. Telish was allowed full consideration in providing a response to the adverse action.

I have carefully reviewed the issues and information that were presented at the hearing. I did not find any new evidence to warrant a reduction in the penalty noted in the Notice of Adverse Action. Therefore, I'm compelled to sustain the Notice of Adverse Action as presented.

Sincerely,

A handwritten signature in black ink, appearing to read "San Martin", written over a horizontal line.

SAN MARTIN, Chief of Investigations  
Bureau of Medi-Cal Fraud and Elder Abuse

For EDMUND G. BROWN JR.  
Attorney General

cc: Shaun Esfandiary, Associate Personnel Analyst

AG0000210



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bcc: Susan Jimenez, Staff Services Manager I (DAS) Personnel Programs

Telish v. The California State Personnel Board  
BS 139506

Tentative decision on petition for writ of mandate: denied. Tentative decision on cross-petition: granted

Petitioner William Telish ("Telish") applies for a writ of mandate overturning the decision of the California State Personnel Board ("SPB") to dismiss him from employment. The Department of Justice ("DOJ" or "Department") cross-petitions for a writ overturning the SPB's ruling to exclude evidence. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

**A. Statement of the Case**

Petitioner Telish commenced this proceeding on September 14, 2012. Telish seeks a writ of administrative mandamus overturning Respondent SPB's decision upholding his dismissal from employment with Real Party-in-Interest DOJ.

In September 1996, Telish was appointed to the civil service position of Special Agent by the DOJ, Bureau of Narcotic Enforcement.

On June 29, 2010, Telish was served with a Notice Of Adverse Action of Dismissal as a Senior Special Agent-In-Charge at the DOJ. The dismissal was effective on July 19, 2010. The allegations for the dismissal occurred on December 17, 2009 where it is alleged Telish violated Government Code sections 19990 & 19572(d)(f)(m)(o)(p)(r)&(t).

Telish appealed the dismissal to the SPB. Between February 28, 2011 through March 4, 2011, a hearing was held before State Personnel Board Administrative Law Judge Mary L. Cote (the "ALJ"). During the hearing, Telish moved to exclude tape recordings made without his knowledge or consent by one of the witnesses against him, LD ("LD"). The ALJ denied Telish's motion to exclude the tape recordings. As a result of this ruling, extensive testimony regarding the content of the tape recordings was admitted into evidence during the hearings.

The ALJ rendered her Proposed Decision sustaining the Notice of Adverse Action on August 25, 2011.

On September 8, 2011, the SPB rejected the ALJ's Proposed Decision. Although the parties' right to argue other matters was unlimited, the SPB invited particular discussion on the following issues: (a) Is the surreptitious recording of [Telish's] conversation with Ms. [redacted] admissible under Penal Code, section 632 et al.?; (b) If the recording is inadmissible, what is the proven misconduct based on the admissible evidence and the appropriate penalty for the proven misconduct?

Telish and the DOJ each submitted written arguments on behalf of their respective positions. On December 13, 2011, Telish and the DOJ argued before the SPB.

On June 21, 2012, the SPB rendered its decision, concluding that the tape recordings were inadmissible under Penal Code sections 632 and 633, but that there was otherwise sufficient evidence to support [Telish's] dismissal.

The SPB decision spent one paragraph analyzing the remaining evidence. The SPB ruled that reversal of the ALJ's decision on the motion to exclude "does not invalidate the ALJ's Proposed Decision sustaining [Telish's] Dismissal. Independent of the recordings, sufficient evidence exists in support of each cause of action for discipline found by the ALJ. The majority



of the evidence received in support of the sustained charges came from the testimony of [Telish] and LD. Notwithstanding the recordings, each factual basis in support of each sustained charge is corroborated by live testimony and/or other evidence admitted at hearing. As such, the ALJ's ruling denying [Telish's] Motion to Exclude was harmless error, and, thus, the ALJ's penalty analysis in support of [Telish's] dismissal shall be left intact."

The Department filed a Cross-Petition on October 9, 2012, seeking to overturn the portion of the SPB's decision that the recorded telephone calls between Petitioner Telish and witness LD were inadmissible.

### **B. Standard of Review**

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceeded without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP §1094.5(c).

Section 1094.5 does not in its face specify which cases are subject to independent review of evidentiary findings. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Instead, that issue was left to the courts.

The right to practice a trade or profession generally is deemed to be a fundamental right requiring application of the independent judgment test. Golde v. Fox, (1979) 98 Cal.App.3d 167, 173. However, the SPB is an agency of constitutional origin, and its decisions are reviewed under the more deferential substantial evidence test. State Personnel Board v. Department of Personnel Administration, (2005) 37 Cal.4th 512, 522.

"Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

An agency is presumed to have regularly performed its official duties (Ev. Code §664), and the petitioner seeking administrative mandamus therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137; Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691 ("[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion).

The agency's decision at the hearing must be based on the evidence. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in



section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. *Id.*

The propriety of a penalty imposed by an administrative agency is a matter in the discretion of the agency, and its decision may not be disturbed unless there has been a manifest abuse of discretion. *Lake v. Civil Service Commission*, (1975) 47 Cal.App.3d 224, 228. In determining whether there has been an abuse of discretion, the court must examine the extent of the harm to the public service, the circumstances surrounding the misconduct, and the likelihood that such conduct will recur. *Skelly v. State Personnel Board*, (1975) 15 Cal.3d 194, 217-218. Neither an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed. *Nightingale v. State Personnel Board*, (1972) 7 Cal.3d 507, 515. The policy consideration underlying such allocation of authority is the expertise of the administrative agency in determining penalty questions. *Cadilla v. Board of Medical Examiners*, (1972) 26 Cal.App.3d 961.

### **C. Governing Law - Eavesdropping**

#### **1. Section 632**

Penal Code section 632 ("section 632") (Eavesdropping on confidential communication; Punishment) provides:

"(a) Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment."

"(b) The term "person" includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication."

"(c) The term "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded."

[REDACTED]  
[REDACTED] a [REDACTED]  
[REDACTED]



proceeding.”

“(e) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.”

“(f) This section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear.”

## **2. Section 633**

Penal Code section 633 (“section 633”) (Lawful activity of law enforcement officer) provides:

“Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, police officer of the County of Los Angeles, or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter.”

[REDACTED]

[REDACTED]

[REDACTED]

## **D. Statement of Facts**

### **1. Background**

Petitioner Telish was a DOJ Special Agent-in-Charge responsible for overseeing multi-agency law enforcement task forces and directing Bureau of Narcotic Enforcement (“BNE”) regional offices. AR 348, 350-51. From 2005 to 2009, Telish was the Director of LA IMPACT, a police chiefs task force which focuses on major narcotic and gang investigations in the greater Los Angeles area. AR 327, 348. In November 2009, Telish was placed in charge of the BNE’s Riverside Office which involved overseeing approximately 100 employees and managing various task forces. AR 350-51.

Task force commanders represent DOJ, and are expected to uphold the standards and policies of DOJ, including ensuring that the work environment is free of discrimination and harassment. AR 1025, 362-64. Telish knew that honesty is an integral part of being a law enforcement officer. AR 347-48. To do his job, Telish had to be able to provide accurate court testimony. AR 357-58.

### **2. The Threat to Compel LD to Lie**

In 2006, while serving as the Director of LA IMPACT, Telish began a sexual relationship with LD, an administrative assistant in LA IMPACT's finance department. AR 366-67. Telish did not tell anyone at DOJ or LA IMPACT about the sexual relationship. AR 369. Telish was getting divorced, but he did not tell LD that fact. AR 371. He wanted her to think he remained married because he wanted to give her an incentive to keep their affair quiet (AR 372), and he did not want a long-term relationship with her. AR 371, 407. He also told her he was being followed by private investigators hired by his wife in order to have a period in which he would not have to see her. AR 407.

At the time he was having an affair with LD, Telish was being personally sued for sexual harassment by Rhea Pfeiffer ("Pfeiffer"), another LA IMPACT employee. AR 392-93. Pfeiffer was LD's superior in LA IMPACT finance, and Telish told LD that she was a potential witness in Pfeiffer's lawsuit. AR 451, 448. In the Fall 2007, LA IMPACT's attorneys defending the Pfeiffer lawsuit conducted witness preparation sessions with LD and another female employee. AR 759, 767-68.

In September 2007, Telish heard a rumor that LD had disclosed their relationship to a few female LA IMPACT employees. AR 369-70. He was concerned that their relationship would be made public. AR 385-86. Telish called LD and went to her house late at night and pounded on her door. AR 373, 443. Telish was angry that she had disclosed their relationship "to the girls." AR 443-44. He said he was next in line to be Assistant Chief of BNE and "he could lose his job." AR 444. He told her she had to fall on her sword for him and tell people that she had made up the affair. *Ibid.* He said she had trouble lying and he would coach her how to do so during an investigation. *Ibid.*

Telish was so angry it scared LD. AR 445. He first threatened to commit suicide if she did not recant. AR 444. He then threatened to reveal the photographs he had of her by posting them on the internet or giving them to her son. *Ibid.*<sup>1</sup> Telish told her to go to Deputy Director of LA IMPACT Rick Law ("Law") and tell him that she embellished her relationship with Telish and had "made up the whole thing." AR 445.

The next work day, LD unexpectedly showed up at Deputy Director Law's office. AR 607. She told him "that she and Will had conversed over the weekend and she was coming in to tell me that there wasn't anything going on between the two." AR 607, 447-48.

In 2007, the DOJ had no idea that Telish had threatened LD to induce her to deny the affair. Telish told both Deputy Director Law and BNE Assistant Chief Jerry Hunter ("Hunter") that the rumors he was having an affair with LD were false. AR 384, 606, 672.<sup>2</sup>

The DOJ believed Telish and did not investigate any misconduct. AR 673, 1011-12.

### **3. The Lie to      About a Confidential Informant**

Telish restarted the affair in approximately April 2008, but remained concerned about

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<sup>1</sup>Beginning in 2006 and continuing over the course of their relationship, Telish had obtained over one hundred nude photographs of LD. AR 367.

<sup>2</sup>Telish justified his statement to Chief Hunter on the basis that he and LD had decided to stop seeing each other, and therefore he was truthful in denying the affair. AR 390-91.



keeping LD quiet. AR 383, 1478. Throughout the entire affair Telish and LD “took breaks,” but he called her at least once or twice a week and they were still “boyfriend/girlfriend.” AR 452-53. Telish justified the breaks by telling LD that he was being followed (by his wife’s private investigator) or there was some kind of investigation going on. AR 754.

LD When the previous explanations for a break no longer would work, Telish told LD that he had an informant in the Director’s Office of the Division of Law Enforcement in Sacramento, an old lady who worked there, from whom Telish could obtain confidential information. AR 406, 1477-78. When LD asked why someone would jeopardize their job by providing Telish information regarding an investigation, Telish replied that he would stick his “cock” down the confidential informant’s 70 year old throat now and again. AR 410-12, 459-60. The informant was fictitious: there was no old lady in the Director’s Office giving Telish confidential information for sexual favors. AR 408. Telish told this lie to LD was because “LD always had a loose mouth” and “I wanted her to be quiet.” AR 409.

#### **4. Physical Intimidation of**

In October 2009, Telish called LD and told her he was coming over to her house from work and was on his way to a task force meeting. AR 454. When he arrived, Telish and had sex. *Ibid.* Afterward, they went into the family room and were about to sit on a couch.

’s cell phone was on a nearby coffee table, and Telish grabbed it, said “what’s this”, and started looking through it. *Ibid.* LD asked Telish to stop looking through the cell phone, and reached for it. *Ibid.* Telish was angry and accused LD of sleeping with the male contacts in the cell phone. 456. He pinned LD down on the couch with one hand and his body while continuing to look through the cell phone with his other hand. AR 454. LD tried to reach for the phone with her hand, but Telish kept her down on the couch. AR 455. Telish said, “I’m stronger than you, you’re not going to win.” *Ibid.* LD wound up ripping Telish’s sleeve during the struggle. *Ibid.* LD told Telish he was hurting her, and he had no right to look through her phone. AR 456. He ignored her and continued looking through her phone. AR 456. stopped struggling. *Ibid.*

The incident left Ms. LD upset, feeling helpless, and with a sore wrist. AR 455.

#### **5. The DOJ’s Criminal Investigation**

By 2009, LD was working for the City of Placentia as the administrative assistant to its Police Chief, Jim Anderson (“Chief Anderson”). AR 457, 619. In early winter of that year,

LD told Chief Anderson that (1) Telish had assaulted her in her apartment in Brea by holding her down on a couch while he examined her cell phone, and (2) while Telish was Director of LA IMPACT he had threatened to show her kid pornographic pictures of her if she did not testify on his behalf during a lawsuit and an Internal Affairs investigation. AR 619-20. Based on her report, Chief Anderson felt that Telish had potentially committed crimes of domestic assault and extortion. AR 620-21. He reported what LD had said to Deputy Director Rick Lopes (“Lopes”) and Director George Anderson (“Anderson”).

LD was interviewed, and she told investigators from the DOJ’s Professional Standards Group (“PSG”) that she was involved in a sexual relationship with Telish, Telish had coached her to lie about the affair and threatened to release nude photographs of her if she did not

cooperate, and he had physically assaulted her. AR 804. The DOJ decided to conduct a criminal investigation. AR 808-09.

Special Agent Supervisor Paul Stauts ("Stauts") conducted the criminal investigation. AR 868. LD told investigators she was willing to record telephone conversations. AR 761-62. Stauts explained that it was legal for her to surreptitiously record the conversations as an agent of a peace officer, instructed her to record her telephone conversations with Telish, and instructed her to discuss Telish's assault by holding her down on the couch and his threat to expose her nude photographs. AR 873. LD expressed concern that this discussion would cause Telish to know that she was recording the conversations, and Stauts assured her he would not. 873. Stauts instructed LD to contact him after the phone calls. AR 874, 472. LD would do so, giving a synopsis of the call. AR 874. Stauts would travel from Sacramento to her Southern California home, and download the digitally-recorded conversation into his computer. AR 874.

LD recorded eight telephone conversations with Telish. AR 874. Not every conversation was recorded. AR 875. In the recorded telephone conversations, Telish made a variety of derogatory and offensive statements including: "I always fly where the white people go," "white is right,"<sup>3</sup> and former LA IMPACT Deputy Director Rick Law is a "silly negro" and a "negroid." AR 2062-63, 2073-74.<sup>4</sup>

On February 23, 2010, Telish and LD talked about the incident in which Telish held her down on the couch. AR 2158-62. LD stated: "you were holding me down on the couch." AR 2160. "What kind of behavior is that?" *Ibid.* Telish did not deny the accusation and instead stated: "And why was I doing that?" *Ibid.* When LD answered "because you were...trying to look through my phone," Telish said: "And why was I doing that?" *Ibid.* LD answered: "Because you thought that I was seeing somebody." Telish responded: "And I was right, wasn't I? And you lied about it. And you even lied about it when I had you caught." *Ibid.* He concluded: "So it sounds like I was pretty justified, doesn't it." *Ibid.*

#### **6. Telish's Statements About BNE Task Force Candidates**

During early 2010, the Placentia Police Department was seeking to place candidates in the PACNET task force which is overseen by the BNE. AR 352, 413-14, 461. There were three Placentia Police Department candidates -- two males and one female. AR 414. Telish was not part of the selection process, but spoke with LD, who was the administrative assistant to Chief Anderson, about the candidates. AR 414. Telish's supervisor was unhappy with the candidate "they" wanted to put on the task force, and Telish called LD to see if she had heard anything. AR 415. He figured that LD was close to Chief Anderson and therefore "thought that she might have some information that wasn't being disclosed to my supervisor." AR 416.

During the conversation, which LD recorded (AR 461), Telish asked LD if the

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<sup>3</sup>Telish admitted making this statement as a joke. AR 413.

<sup>4</sup>At the administrative hearing, Telish recalled calling Deputy Director Law, who is black, a "silly negro" and stated that he did so "[b]ecause Rick Law is, you know, goofy, he jumps around a lot." AR 1471.



female candidate had “big titties,” and whether the male candidate had a “big cock.” AR 416, 2070-71.<sup>5</sup>

reported Telish’s comments to Chief Anderson. AR 462, 624. Chief Anderson was concerned about sending one of his female officers “into an environment managed by Telish” that he considered to be sexually hostile.” AR 625-26.

#### **7. ’s TRO Against Telish**

Staubs prepared his report on the criminal investigation and provided it to the Orange County District Attorney’s Office. AR 813-14. The district attorney declined to prosecute and PSG closed its criminal investigation. AR 814-15, 1016-17.

In March 2010, Telish was served with a civil harassment TRO on behalf of as well as a notice placing him on paid administrative leave. AR 420, 423, 2173-80, 2184-85. At the time, Telish had dozens of sexually explicit photos of LD. AR 421.

In or about January 2011, Telish and LD entered into a Stipulation resolving the civil harassment proceeding. AR 2182.<sup>6</sup> Through the date of the administrative hearing, Telish had not returned any nude photographs to LD. AR 464-65.

#### **8. The Administrative Investigation**

Pursuant to a March 4, 2010 written request from Director Anderson, the Attorney General’s Employment Section was asked to conduct a personnel investigation of the allegations. AR 525-26. Employment Section Attorney Alicia Fowler (“Fowler”) assigned herself and Barbara Seidman (“Seidman”) to investigate whether Telish’s actions violated state employment rules. AR 527. They obtained a copy of the criminal investigation conducted by the Attorney General’s Division of Law Enforcement. Ibid.

Deputy Attorney General Fowler was alerted at the outset to the existence of the criminal investigation against Telish, but was not involved in the investigation. AR 528-29. She sat in on a meeting in which DLE was getting legal advice from the DOJ’s criminal section, but all she did was listen. AR 529. She had not yet made a decision on the request that her group perform the administrative investigation. AR 551.

The administrative investigation included an April 5, 2010 interview of Telish, who was represented by counsel. AR 531-32, 371. The investigators began the interview by cautioning Telish that his answers needed to be forthright and honest. AR 2193.

During the interview, [REDACTED] He contended that the contact while he was trying to read her cell phone started as playful, but she started getting mad and climbing on him. AR 2208. The only physical struggle was her jumping on his back and him physically restraining her only by holding her back. AR 2208, 2212.

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<sup>5</sup>At the administrative hearing, Telish admitted making these comments. AR 416.

<sup>6</sup>DOJ contends that in the stipulation Telish agreed “that any photographs of LD in Telish’s possession, if any, will not be distributed on the Internet . . . Telish shall return all such items to LD via counsel.” That information is not contained in the cited page AR 2182.

Telish admitted that he had taken sexually explicit photographs of LD from the “very beginning in 2006.” AR 2196. LD also sent him by email over 100 sexually explicit photographs of herself. AR 2197-98. Telish deleted all the sexually explicit photographs right after he was placed on administrative leave. AR 2198-99, 2202. He explained his rationale: “I obviously knew when I got put on administrative time off, and when I saw the restraining order, you know, it went bad with her. And I have—I figured, you know, at some point I’m going to be asked about them. You know, sort of the same thing, I just—I wanted it to be not in my—not under my control at that point. You know, I wanted to be rid of it. Plus, I was angry, you know. I—I think that—I didn’t understand how that—what that hit the way it did. And that was it.” AR 2225. When asked to confirm that he no longer had any of the pictures, Telish stated, “Correct. Yeah, exactly. I deleted them once this happened. I never got the chance to give them back to her.” AR 2200.

Telish admitted that he lied to LD about having a fictitious old lady confidential informant in the Director’s Office. AR 2213-16. He denied telling LD that he provided sexual favors to the “old lady.” AR 2215. He only told LD : “[The informant] was 90 years old and that she just liked me, I remind her of her son.” *Ibid.*

Telish admitted he had asked LD about the Placentia Police Department candidates because, “I probably discussed it with LD because she worked there. I wanted to know—I was—I wanted to know what was wrong with that guy. You know, what was wrong with the girl.” AR 2221. When asked whether he had asked LD if the female candidate had big breasts or about the male candidate’s penis size, Telish responded: “No, I don’t recall anything like that.” AR 2221-22.

#### **9. The Notice of Adverse Action**

The DOJ served Telish with a Notice of Adverse Action (“Notice”) dismissing him from his position as Senior Special Agent-in-Charge. AR 1-18. The Notice alleged violations of Government Code section 19572(d)(inexcusable neglect of duty), (f)(dishonesty), (m) discourteous treatment of the public or other employee, (o) willful disobedience, (o) misuse of state property, (r) violation of Govt. Code section 19990 prohibitions, and (t) failure of good behavior. AR 2.

The Notice alleged, among other things, that Telish had held LD down on the couch to look over her cell phone and that he was dishonest when asked about the incident in his administrative interview. AR 6, 8. Telish was alleged to have fabricated the story about having a confidential informant in the Director’s office, and to have been dishonest during his administrative interview regarding destroying nude photographs of LD . AR 9. The Notice further alleged that Telish made inappropriate statements regarding the genitalia of candidates of the PACNET task force and being dishonest when asked about these statements in the administrative interview. AR 7-8, 10.

Director Anderson testified that because the investigation found Telish to have been dishonest, termination was automatically required because it impacts the employee’s ability to function as a peace officer. AR 1026-27.

#### **10. The ALJ’s Proposed Decision**



Prior to the hearing, Telish moved to exclude the recordings of LD's phone calls. *See* AR 3636. He argued that the recordings were made without his consent, were not recorded as part of a criminal investigation, and were not supervised by law enforcement. AR 1506. The ALJ The ALJ concluded that section 633 applied. She also concluded that Title III of the Omnibus Crime Control Safe Street Act of 1968 (18 U.S.C. §§ 2510-2521) did not preclude recording of the conversations because the criminal investigation of Telish was not for the serious crimes listed in 18 U.S.C. section 2516(a). AR 1508-1509.

The ALJ's August 25, 2011 Proposed Decision sustained the dismissal of Telish. The ALJ addressed a POBRA statute of limitations issue, finding that DOJ was unaware of Telish's 2007 threat to reveal sexually explicit photographs of LD until December 2009 and the charge was not time-barred. AR 3634. She addressed and denied Telish's claim that he had a First Amendment right to make statements. AR 3634. She further denied Telish's POBRA claim that he had been interrogated about LD without compliance with Govt. Code section 3303. AR 3635.

The ALJ made findings about Telish's job (AR 3636-37), his relationship with Drulie (AR 3637-40), the events of October 27, 2009 (AR 3640-41), Telish's recorded telephone calls of January 4, 20, and February 23, 2010 (AR 3641-46), the investigative interview of Telish on April 5, 2010 (AR 3646-48), Telish's knowledge of DOJ policies and procedures (AR 3648), and a credibility determination favoring LD over Telish (AR 3649-50). The ALJ analyzed the legal principles and found Telish guilty of inexcusable neglect of duty (AR 3651), dishonesty (AR 3652), discourteous treatment (*ibid*), misuse of state property (AR 3653), and other failure of good behavior (AR 3654-56). She found Telish not guilty of willful disobedience (AR 3653) and "incompatible activities" (AR 3654). The ALJ decided that termination was the appropriate penalty because of Telish's dishonesty in his interview, his communication with his supervisor, and with LD. AR 3656-57. His discourtesy toward an inferior employee and misconduct in destroying potential evidence, intimidating an employee, making up a confidential informant, and expressing racial and sexist views also harmed the public service and placed DOJ in a poor light. AR 3657.

#### **11. The SPB Decision**

The SPB rejected the ALJ's proposed decision and decided the case itself, inviting the parties' discussion on the admissibility of the recorded conversations and whether there was sufficient evidence without the recordings. AR 3629.

The SPB adopted the ALJ's factual findings (AR 3617), and addressed the admissibility of the recorded phone calls. It noted that the ALJ admitted the recorded phone calls on the basis that they were performed at the direction of the DOJ, related to a criminal investigation of serious crimes, and the exception of section 633 and Title III of the Omnibus Crime Control Safe Street Act of 1968 (18 U.S.C. §§ 2510-2521) applied. AR 3624-25. The SPB agreed that the section 633 exception permitted the surreptitious recording of the Telish/ LD phone calls at DOJ's direction, but disagreed that the recordings could be used at an administrative hearing, relying on Rattray v. City of National City, ("Rattray") (9<sup>th</sup> Cir. 1994) 51 F.3d 793. AR 3625-26. Even though the recording was lawful, "the use of the recording was to discipline a DOJ employee in an administrative hearing, betraying the very purpose of the legislation, which is to detect crimes

and apprehend criminals. Simply because DOJ obtained the recordings as part of a criminal investigation, does [*sic.*] not mean that it has free reign to sue the recordings at its own volition.” AR 3626.

Although the recordings should have been excluded, the factual basis in support of each sustained charge was corroborated by live testimony and/or other evidence admitted at hearing. As such, the ALJ’s denial of the motion to exclude the recordings was harmless error and Telish’s dismissal upheld. AR 3627.

## **E. Analysis**

### **1. Procedural Failure**

[REDACTED] ng [REDACTED] For [REDACTED]  
[REDACTED] m [REDACTED] supp [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED] et [REDACTED]  
[REDACTED] [REDACTED] nte [REDACTED]  
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[REDACTED] e d [REDACTED] an [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

### **2. The SPB Erroneously Excluded the Recorded Phone Calls**

Assuming *arguendo* that the court must analyze the other issues, perhaps the most critical issue, raised in the Department’s cross-petition, is whether the SPB committed an abuse of discretion when it ruled that the recorded phone calls were inadmissible at the administrative hearing. This is an issue of law which the court reviews *de novo*.

The SPB determined that the recordings occurred as part of a criminal investigation of Telish, and section 633’s law enforcement exception applied. AR 3625. Yet, the SPB inexplicably decided that, although legally recorded, the phone calls could not be used as evidence in an administrative employment proceeding. AR 3625-26. In so ruling, the SPB concluded that section 633 is a “use” statute, interpreting 633 as providing a limited exception for the use in criminal cases of otherwise illegally-recorded communications.

The SPB was plainly wrong. Pursuant to section 632(a), it is a crime to record a confidential telephone conversation without the consent of all parties. Section 632(d) further provides that no evidence obtained in violation of section 632 shall be admissible in any judicial, administrative, legislative, or other proceeding. Section 633 permits law enforcement, and any person acting pursuant to the direction of one of these law enforcement officers acting within the



scope of his or her authority, to overhear and record conversations and any evidence obtained pursuant to the law enforcement exception is admissible.

There is nothing in section 633 which limits use of the telephone call recorded pursuant to the law enforcement exception in a criminal case. Rather, if the conversation is recorded in the course of a criminal investigation, the exception applies and the recording is admissible in any proceeding -- criminal, civil, or administrative. [REDACTED]

When the SPB found that the recordings were lawfully obtained because LD was acting at DOJ's direction<sup>7</sup> in a criminal investigation, the recordings became admissible in any proceeding, including Telish's administrative proceeding. The SPB's conclusion -- "[s]imply because DOJ obtained the recordings as part of a criminal investigation, does not mean that it has free reign to use the recordings at its own volition" -- is wrong as a matter of law.

In People v. Towsy, (1986) 174 Cal.App.3d 1114, a police informant was instructed by police to record "all telephone conversations involving any illegal activities" and to then turn over the tape recording of the conversations to the police. Id. at 1120. The informant made the recordings from his home telephone using his own recording equipment without a police officer present. Id. at 1126-27. The court held that the tape recordings were admissible and any "looseness" of police supervision in the recording went to the weight, not the admissibility, of the evidence. Id. See also People v. Brandow, (1970) 12 Cal.App.3d 749, 752-753 (telephone conversations recorded by prostitute with defendant at police direction were admissible in criminal prosecution).

The SPB's reliance on Rattray is misplaced.<sup>8</sup> In Rattray, the court interpreted section 622's prohibition in the context of a police chief's employment investigation of an allegation that a police officer was sexually harassing another department employee. 51 F.3d at 795-96. The district court relied on section 633's law enforcement exception to dismiss the police officer's invasion of privacy claim, concluding that any police chief could secretly record the private conversations of department employees. Id. at 797. The Ninth Circuit noted that the legislative history of section 633 protects only recording and eavesdropping in the course of criminal investigations, and not police recordings of their own employees as a matter of internal discipline." Ibid. It concluded that section 633 permitted law enforcement to record without all parties' consent only in criminal investigations, and any other interpretation would constitute unlawful discrimination between public and private employees by letting a police chief do what a private employer could not do. Ibid.

There is little doubt that Rattray is correctly decided. It stands for the proposition that section 633 applies to law enforcement recordings of telephone calls in the course of criminal

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<sup>7</sup>As the first paragraph of section 633 provides, the actual recording need not be made by law enforcement personnel; a private person acting at the direction of law enforcement in a criminal investigation may lawfully record the call.

<sup>8</sup>Rattray is a Ninth Circuit opinion entitled to deference on federal questions, but not on state law.



investigations; law enforcement may not record a phone call for civil or administrative purposes despite the failure of section 633 to expressly refer to criminal investigations. But Rattray has nothing to do with the use of a recorded telephone call, properly recorded in a criminal investigation, in a civil or administrative case.

[REDACTED]

[REDACTED]

### **3. The Stalking Horse Exception**

Perhaps aware of the erroneous nature of the SPB's ruling, Telish attempts to bolster his position by relying on Dyson v. State Personnel Board, ("Dyson") (1989) 213 Cal.App.3d 711.

In Dyson, items were seized from the home of a person employed as a youth counselor with the state's Department of Youth Authority, and held by the state agency pursuant to a search for evidence that the employee had committed the crime of theft. The search was initiated, directed, and participated in by agency's chief of security, acting under his authority as a peace officer. The evidence was turned over by the agency to police authorities for use in a criminal proceeding initiated on the complaint of the agency. The evidence was excluded at trial and the criminal prosecution was dismissed on grounds that the search violated the employee's constitutional right to privacy. The employee argued that the property should also have been excluded as evidence in the administrative hearing regarding his employment. The court of appeal reversed the employee's dismissal, holding that the exclusionary rule was available in the circumstances of the case. The unconstitutional search could not have a tighter nexus with the agency that sought to profit from it. The court further held that the agency was collaterally estopped to deny the invalidity of the search for and seizure of the evidence. 213 Cal.App.3d 711, 727-28.

Dyson is related to the general case law that an agency cannot rely on the broad investigative powers of criminal investigations as a "stalking horse" for civil or administrative purposes. Criminal law enforcement agencies have broad subpoena and investigative authority which can be abused where the sole or dominant purpose is to develop evidence for a non-criminal purpose. Critical to the Dyson decision was "a convergence between the disciplinary interests and the penal interests" of the state and the state agency that conducted the search. Id. at 727. In Dyson, the illegal search was initiated, directed and participated in by the Youth Authority's chief of security acting under his authority as a peace officer.

Telish points out that the DOJ conducted both the criminal and administrative investigations. He argues that, after LD told it that he had assaulted her and committed an extortion, the DOJ invented a pretext that Telish had committed false imprisonment when he held her down in order to justify recording the phone calls. Mot at 9. He points out that the administrative lawyer, Alicia Fowler, was present at the December 2009 meeting and the DOJ had a clear motive to use the evidence obtained from the recorded calls for disciplinary purposes. Mot. at 10. This conduct "shocks the conscience" and the balancing test requires application of the exclusionary rule to the phone calls. Ibid.

Conceptually, the DOJ's recording of the phone calls for criminal purposes could be a stalking horse for its disciplinary proceeding. But this is a factual showing. See Van Winkle v.



County of Ventura, (2006) 158 Cal.App.4th 492, 498 (allegation that sheriff often initiates criminal investigations as shams in order to conduct disciplinary investigations of deputies without affording POBRA rights must be supported by pleading and proof). More is required than the fact that the DOJ acted in a dual capacity of both criminal and administrative investigator. Telish must plead<sup>9</sup> and prove that the DOJ was motivated to, and did, use its criminal enforcement authority to develop evidence for its disciplinary case. This evidence may be circumstantial, but it must be tangible.

On December 18, 2009, DaValle interviewed LD in her apartment in Brea with Special Agent Supervisor Catherine Gauthier ("Gauthier"), who was Special Agent-in-Charge of PSG. AR 802-03. DaValle brought Gauthier because of the allegations of sexual activity. AR 803. After the interview, DaValle told LD that DOJ would need to evaluate her complaint and make a decision whether to conduct a criminal or administrative investigation. AR 806.

The next day, DaValle met with Director Anderson and Deputy Director Lopes and they decided fairly quickly to conduct a criminal investigation. AR 809, 1014.

About a week or two later, DaValle assigned Stauts to the criminal investigation of Telish because of his availability and prior similar investigative experience. AR 809, 868-69. Stauts and DaValle discussed the possible crimes committed by Telish based on DaValle's interview of LD. Ibid.

Stauts and DaValle then met with the Supervising Criminal Deputy Attorney General Mike Canzoneri ("Canzoneri") to ascertain whether the crime of intimidating a witness could be committed where the victim was not necessarily a witness. AR 810, 868-69. Also present were Director Anderson, Senior Assistant Deputy Attorney General Alicia Fowler ("Fowler") (Stauts "believed" she was present), and Deputy Director Lopes (Stauts thought he "probably" was present). AR 871. LD stated that Telish had instructed her to change her story about his relationship with her, and LD was potentially a witness in Telish's sexual harassment lawsuit. AR 870. Deputy Attorney General Canzoneri advised that if Telish believed LD was a potential witness in his civil lawsuit, it would be considered a crime for him to intimidate her. Deputy Attorney General Canzoneri also believed that Telish committed false imprisonment of LD when he held her arm down, and this was the stronger of the two potential charges. AR 870-71.

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<sup>9</sup>It does not appear that Telish raised any "stalking horse" or other Dyson theory before the SPB. However, the Department has not objected that Telish failed to exhaust his administrative remedies.



Stauts had a number of discussions with DaValle, Gauthier, and Deputy Director Lopes about the possibility of recording LD in conversation with Telish. AR 811, 871. Stauts did

her calls with Telish. AR 872. He explained that he wanted her to accuse Telish of falsely imprisoning her, and threatening to expose intimate pictures of her if she did not change her story to Commander Law. AR 873.

LD recorded eight calls with Telish. Status would fly to Southern California, meet with her, and download the tape to his computer. AR 874. Stauts kept DaValle apprised, and he kept the Director and Deputy Director informed. AR 811-12. Stauts' investigative report was approved by Director Anderson and Deputy Director Lopes and presented to the Orange County District Attorney. AR 813-14. The district attorney recommended that Stauts interview Telish. He attempted to do so, but Telish declined. AR 814. The district attorney rejected criminal prosecution. *Ibid.*

Deputy Attorney General Fowler conducted the administrative investigation. AR 934. Pursuant to a March 4, 2010 written request from Director Anderson, the Attorney General's Employment Section was asked to conduct a personnel investigation of the allegations. AR 525-26. Fowler assigned herself and Attorney Seidman to investigate whether Telish's actions violated state employment rules. AR 527. They obtained a copy of the criminal investigation conducted by the Attorney General's Division of Law Enforcement ("DLE"). *Ibid.*

She had not yet made a decision on the request that her group perform the administrative investigation. AR 551.

Director Anderson forwarded the transcripts of the telephonic recordings to Fowler for her investigation. AR 938. The rest of the criminal investigation was also provided to the administrative team. AR 815. The DOJ kept the two investigations separate "because in an administrative investigation you're allowed to compel a statement from an employee." AR 815.

These facts do not support a Dyson-like convergence between the criminal and administrative authority.

the filing. Unlike Dyson, the DOJ was careful to keep the criminal and administrative investigations separate until after the rejection.

Fowler, who handled the administrative investigation, was present at the December 2009 meeting to ascertain whether Telish had committed a crime. But there is no evidence that she had input into the decision-making; her testimony was to the contrary. More importantly, there is no evidence that Fowler had any involvement in the decision to tape record LD's phone calls to Telish. Rather, the evidence shows that decision was made by the criminal investigation team as the only real means of proving a criminal case.

In short, there is no close connection or "convergence between the disciplinary interests and the penal interests" of DOJ to warrant a conclusion that it violated section 632 by using its



criminal enforcement arm as a stalking horse.

The DOJ is entitled to relief on its Cross-Petition. The SPB should have found that the tapes were admissible. With the tapes in evidence, there is an abundance of evidence to support the charges against Telish. He does not even argue to the contrary.

#### **4. The Remedy for Inadmissible Recording**

If *arguendo* the court is wrong and the recorded calls should be excluded, either because SPB was correct or because the DOJ used its criminal arm as a stalking horse for disciplinary action, Telish argues that exclusion of the transcript of recorded telephone calls under section 632 is not enough. He contends that all evidence obtained through the use or derivative use of the recordings, including interviews based on the recordings and refreshing witness recollection and past recollection recorded where a witness could not refresh recollection, must also be suppressed. Mot. at 3-5, 7.

In making this argument, Telish discusses the court-created exclusionary rule for search and seizure violations under the Fourth Amendment, and the balancing test which applies to determine the rare case in which the exclusionary rule should apply to exclude in an administrative proceeding evidence obtained from unconstitutional searches. Mot. at 8. *See Department of Transportation v. State Personnel Board*, (2009) 178 Cal.App.4th 568, 576-78 (rarely applied exclusionary rule in administrative context requires balancing test).

There is no need for a balancing test on exclusion of the recorded calls. Where section 632 is violated, all “evidence obtained” as a result of the violation is inadmissible in an administrative proceeding. §632(d). The only question is what evidence besides the transcripts themselves must be excluded?

This question was answered in *Frio v. Superior Court*, (“*Frio*”) (1988) 203 Cal.App.3d 1480. The *Frio* court applied the Fourth Amendment exclusionary rule to section 632 violations by analogy, reasoning that both section 632 and the Fourth Amendment effectuate privacy rights, deter future violations, and preserve judicial integrity. *Id.* at 1490. In parallel to the exclusionary rule, the *Frio* court held that the illegal recording of a phone call under section 632 does not prevent a recording participant from testifying about the phone call. *Id.* at 1498. The transcript of an illegally recorded phone call may be used to refresh witness recollection, but not for past recollection recorded. *Id.* at 1492, 1494-95. And it may also be used to impeach a testifying witness. *Id.* at 1497.

Assuming the recordings should have been excluded, Telish has not shown that the testimony about the telephone calls was improperly admitted under *Frio*. Telish contends that the record does not affirmatively show the independent recollection of either Telish or [redacted] apart from the transcripts of the recordings. This is not surprising. Telish did not cite *Frio* in his moving papers to the ALJ (AR 225-36), and did not argue that an appropriate foundation was required under *Frio*.

The record may not affirmatively show independent recollection, but that is not enough. Telish has the burden of proving that the witnesses did not independently recall the telephone calls. He has not met that burden.

Telish stated in his interview that he did not recall the conversation with LD about a Placentia Police Department candidate having big breasts (AR 418), but he testified at the

administrative hearing that he did have that conversation. AR 416. He also admitted the “white is right” comment and the disparagement of Deputy Director Law is a “silly negro. He further had an independent recollection of the “pinning down” incident, although his recollection at hearing differed from what he said on the transcript.

LD testified, and never said that she lacked a present recollection of a recorded phone call. It is true that she had a transcript in front of her which she relied upon (AR 499), and that she also stated that she would have to read more of a transcript before she could answer whether her recollection was refreshed on a point (AR 515). But these facts do not show that LD had no present memory outside the transcripts.

Given Telish’s failure to exhaust either his own or LD’s memory, their testimony about the telephone calls was admissible even if the transcripts should have been excluded.

### **5. The SPB’s Findings are Supported by Substantial Evidence**

Notwithstanding the SPB’s incorrect ruling on the admissibility of the recordings, there is substantial evidence in the record to support the findings that Telish was guilty of numerous acts of misconduct even if the recordings should have been excluded.

#### **a. The Assault**

The ALJ<sup>10</sup> found that Telish pinned LD on the couch so that he could look through her cell phone and was dishonest when he denied doing so during his investigative interview. There is substantial evidence in the record apart from the recordings to support this finding, including the testimony of LD that Telish assaulted her. LD was consistent in recounting the assault to Chief Anderson, the PSG investigators, and at the administrative hearing. She consistently stated that Telish pinned her down on the couch to scroll through her cell phone.

Telish testified that he did not hold LD down, but rather she jumped on his back when he was looking at her cell phone. AR 398. He equivocated on whether he held her down on the

This was discourteous treatment and other failure of good behavior under Govt. Code section 19572(m) and (t). *See* AR 3652, 3654-55. His denial of doing so in his administrative interview constituted dishonesty under Govt. Code section 19572(f). *See* AR 3652.

#### **b. Discourteous Treatment**

There is substantial evidence outside of the recorded calls that in 2007 Telish threatened to disclose the nude photographs of LD. Indeed, the ALJ’s proposed decision did not rely on

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<sup>10</sup>Since the SPB adopted the ALJ’s findings of fact and conclusions of law with the exception of the ruling on the recordings, the court shall refer to the ALJ’s proposed decision. *See* AR 3617.



any evidence from the recorded calls on this issue. AR 3652.<sup>11</sup>

LD testified Telish came to her house visibly angry and threatened to disclose her nude photographs if she did not lie about their relationship. AR 443-45. LD consistently told this version of events to Chief Anderson (AR 619-20), and in her tape-recorded interview with DaValle. AR 804. She was buttressed by Telish's admissions that he was trying to keep the affair secret and that he was upset when he learned LD had told others about it. AR 369-70.

In his testimony, Telish denied making the threat to reveal the photos to LD's son. AR 1394. He testified that she thought he was married, was essentially stalking him, and he told her he did not want to be around her. AR 1370. He said they should break it off. *Ibid.* He feared that she would disclose their affair to his bosses, but that was true whether they were together or not. AR 1371. In September 2007, he learned that she had told three other people about their affair and two others figured it out, including Law. AR 1373-74. He met with LD and they agreed to break it off and not discuss it. AR 1376-77. Photos were never mentioned until the recorded calls in 2010. AR 1385.

From his testimony, Telish argues that at least five people knew about the affair when he came to LD's house in September 2007. Mot. at 16. He made no effort to intimidate any of those five people, and LD must have gone to Deputy Director Law in an misguided effort to fix things so their affair could continue. *Ibid.* Moreover, LD continued to send Telish both explicit and non-sexual photos after the alleged threat, which Telish concludes does not make sense. Mot. At 17. LD is a woman scorned with a motive for vengeance, and she falsely stated in her TRO application that his threats were recorded (AR 3406). Mot. at 18. Telish concludes that in a "he said, she said" situation he should get the same benefit of the doubt as anyone else.

There is some merit to Telish's position. LD sued Telish and DOJ (AR 465), she told Jamie Robinson, Telish's secretary, that Telish gave her herpes, apparently falsely (AR 780, 752), she admitted that prior to December 2009 she lied to DOJ about Telish (AR 628), and Chief Anderson thought it was inconsistent with the alleged extortion that LD would send more photographs to Telish (AR 643).

LD also exhibited some stalking behavior. According to Telish, LD looked through his calendar, ascertained that he had a divorce attorney, and confronted Telish about his divorce. AR 1366-67. LD used a reverse directory to find the address of Telish's high school friend, Judy, drove 100 miles to Judy's house, and waited outside for him to come out. AR 1368. Robinson knew that LD was really angry with Telish, and she feared that she would perjure herself at the Pfeiffer trial to get back at him. AR 779. LD sent seven emails to Robinson checking on Telish's whereabouts. AR 728-31. Gloria Deluca (position unstated) testified that LD was a woman scorned with a "he's not going to do this to me type thing." AR 1174.

On the other hand, Telish lied repeatedly to LD. The lies included the fact that he was married, that his wife had hired a private investigator, and that he was being investigated. He also made up the existence of the confidential informant because "I wanted her to be quiet."

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<sup>11</sup>Although the ALJ found that the threat was made (AR 3639, finding #9) and that the allegation was not barred by POBRA's one year limitations period (AR 3634), discourtesy was the only charge sustained by the ALJ based on this evidence.

Telish's threat was consistent with his "efforts to keep LD quiet. See AR 3649.

Moreover, the timing of events supports LD's testimony. Telish was defending a sexual harassment lawsuit in which LD could be called as a witness. There was no doubt that he was upset about the rumors of his affair with LD, and that disclosure could have repercussions for him. This is particularly true since Telish told both Deputy Director Law and BNE Assistant Chief Hunter that the rumors of his affair with LD were false. The next day after Telish came to LD's house, she unexpectedly told Deputy Director Law there wasn't anything going on between her and Telish. She clearly did so to benefit Telish, because she had told the "girls" the truth. It makes far more sense that she did so at his direction, and not in a "misguided effort to fix things."

In any event, substantial evidence supports the SPB's decision that Telish threatened to release the photos if LD did not deny the affair. By using threats to coerce LD into lying to Deputy Director Law, Telish was discourteous to her in violation of Govt Code section 19572(m). See AR 3652.<sup>12</sup>

### **c. Dishonesty**

There is substantial evidence in the record outside the recorded calls to support the ALJ's determination that Telish was dishonest in his administrative interview under Government Code section 19572(f) by denying that he pinned LD to the couch, that he told LD that he engaged in sex with the fictitious confidential informant, and that he commented on the breast and penis sizes of Placentia Police Department candidates. See AR 3652.

Telish was dishonest in his interview when he denied telling LD he had sex with the confidential informant. Telish and LD also agreed that Telish told her that he had a confidential informant within the Director's office in Sacramento. AR 406. LD testified that Telish told her "he sticks his cock down her 70-year-old throat." AR 459-60. Telish admitted that the confidential informant was fictitious (AR 408), and that he made the "crude sexual comment" to LD of "[s]omething to the effect of sticking my cock down her throat now and again." AR 411-12. [REDACTED]

[REDACTED] LD testified, and Telish admitted, that they discussed the Placentia Police Department candidates for the PACNET task force and Telish asked if the female candidate had "big titties" and whether the male candidate had a "big cock." AR 416, 461; 1487. In his interview, Telish responded: "No, I don't recall anything like that." AR 2221-22.

Telish does not address this dishonesty in his moving papers, but argues in reply that a failure to recall is not a lie when you don't remember. Reply at. 6. This is correct. But Telish

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<sup>12</sup>The Department contends that this coercion was also a neglect of duty and a failure of good behavior. It probably was, but the ALJ did not find him guilty of those charges based on the threat.

The Department also contends that Telish lied about the threat in his administrative interview, but fails to cite to pertinent testimony in the transcript, relying only on the ALJ's decision. Opp. at 14 (citing AR 3646).



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also said "No" besides saying "I don't remember." This response may be interpreted as a denial. While the question is close, substantial evidence supports the finding of dishonesty on this issue.

During the interview, Telish denied that he physically held [redacted] down on the couch and that he told her he was stronger than her. AR 2208-09. As discussed above, this was dishonest.<sup>13</sup>

**d. Neglect of Duty**

The ALJ found that Telish committed an inexcusable neglect of duty under Government Code section 19572(d) when he made derogatory statements about minorities and women to an employee of another police agency ( LD ), in deleting photographs of LD that could implicate him, and in not being truthful in his interview. Substantial evidence of at least the former exists without the recorded calls.

The fact that Telish was not truthful in his interview was discussed *supra*.

Telish's dishonesty about the nude photographs also was proven by witness testimony, Telish's statements during his administrative interview, and by the fact that in early 2011, Telish was still in possession of numerous nude photographs of Ms. LD , which he gave to his attorney in that matter. Telish even brought them with him to the administrative hearing. See AR 433-435, 463-466, 2198-2199, 2201-2202, 2225.

In his administrative interview Telish claimed he deleted the nude photographs of [redacted] because he was angry. In its opposition (Opp. at 15), the Department takes the position that Telish lied because he never destroyed or deleted the nude photographs and, in fact, brought dozens of nude photographs of LD to the hearing, explaining that he found them when "doing housecleaning work on my computer." AR 433-34.

The Department cannot both claim that Telish lied about deleting the photographs because he did not do so, and yet also committed a neglect of duty by deleting them. It remains entirely possible that Telish destroyed some of the photographs, but still had others which he found and brought to the hearing. Thus, the interview lie was not shown. Moreover, neglect of duty requires a clear policy. See AR 3651. The ALJ proposed decision points to no clear policy or duty, and the Department cites none, which required Telish to keep the photographs. There simply is no general law enforcement duty to preserve evidence against yourself based on a civil TRO stating that photographs were used to extort LD 's silence. AR 2174.

LD Both LD and Telish testified that Telish called Director Law a "silly negro" and "negroid" and that he made the statement "white is right." He also commented to LD on the breast and penis sizes of Placentia Police Department candidates. Telish admitted that he asked [redacted] about the candidates precisely because she was employed there and might have knowledge

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<sup>13</sup>Telish argues that the ALJ's finding #8 that he lied to BNE Assistant Chief Hunter in 2007 about the rumors of his affair (AR 3638) was both outside the statute of limitation and untrue. Mot. at 13. The short answer is that the ALJ made this finding as background information and did not even rely on it for her conclusion of dishonesty.

He further argues that he did not lie in his interview that he attempted to call Chief Anderson, and Chief Anderson's testimony that he never received a message does not disprove that fact. Mot. at 14. Again, the ALJ did not rely on this alleged lie for her dishonesty conclusion.

of the candidates. AR 414-16.

Telish's moving papers do not even address these comments, except to wrongly state that he could not recall them in his testimony. Mot. at 13. It is no doubt true, as the ALJ stated, that Telish was a high level manager with a duty to uphold the DOJ's policies against harassment and discrimination. AR 3651. His comments violated these policies.

There was substantial evidence without the recorded phone calls that Telish was untruthful in his interview, and in making derogatory statements about others to

#### **e. Misuse of State Property**

The ALJ's finding that Telish engaged in misuse of state property in violation of Government Code section 19572(p) is also supported by substantial evidence outside the recorded telephone conversations. *See* AR 3653.

On October 27, 2009, Telish drove his state vehicle from his home in South Orange County (Aliso Viejo) 20 miles east to LD's house in Brea so he could have sex with her when he was supposed to be going to Santa Barbara. AR 393-94, 1403-04. The use of a state vehicle to go out of his way for personal reasons was inappropriate; he should have gone directly to the meeting. AR 1091.

Telish relies on testimony that it is not inappropriate to use a state vehicle to go to a girlfriend's house if it is on the way, but that is not what happened. Mot. at 15. He also relies on a SPB precedential decision that it is not a misuse of state property if some part of the property's use was for the intended purpose, but does not attach the decision. *See ibid.*

Although this was not a major violation, substantial evidence exists outside the recorded phone calls that Telish misused state property.

[REDACTED]

### **3. The Penalty Was Not an Abuse of Discretion**

The penalty determination of the SPB will not be disturbed absent a manifest abuse of discretion. *Gonzalez v. State Personnel Bd.*, (1995) 33 Cal.App.4th 422, 428. The SPB determined dismissal was warranted because Telish "was a peace officer in a high level management position who failed to act with integrity and honesty." AR 3656-57.

Telish does not contend that the penalty of dismissal was inappropriate. Even if he did, the court could not overturn the SPB's decision. He abused his position of authority. Moreover, as Director Anderson testified, Telish's dishonesty made his dismissal automatic because he cannot serve in any kind of law enforcement capacity.

#### **F. Conclusion**

Telish's opening brief is procedurally defective because he did not present all of the

pertinent evidence on any issue. In addition, the SPB erred in excluding the recorded phone calls, and substantial evidence supports the findings of guilt even without admission of the recorded calls. For these reasons, Telish's petition for writ of mandate is denied and the DOJ's cross-petition is granted. There is no need to remand to the SPB for further proceedings because the ruling on the cross-petition does not change the outcome.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

**FILED**

MAR 10 2015

WILLIAM TELISH,

Plaintiff and Appellant,

v.

CALIFORNIA STATE PERSONNEL  
BOARD, et al.,

Defendants and Respondents;

CALIFORNIA DEPARTMENT OF  
JUSTICE, et al.,

Real Parties in Interest and  
Respondents.

B250856

JOSEPH A. LANE

Clerk

(Los Angeles County  
Super. Ct. No. BS139506)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
James C. Chalfant, Judge. Affirmed.

DesJardins & Panitz, LLP and Eric A. Panitz for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Kamala D. Harris, Attorney General, Alicia M.B. Fowler, Assistant Attorney  
General, Christine B. Mersten and Chris A. Knudsen, Deputy Attorneys General for Real  
Parties in Interest and Respondents.



Plaintiff and appellant William Telish (Telish) appeals a judgment denying his petition for writ of administrative mandate (Code Civ. Proc., § 1094.5)<sup>1</sup> wherein he sought to set aside a decision by defendant and respondent California State Personnel Board (SPB or Board) upholding his dismissal from his position with the California Department of Justice (DOJ).

The essential issue presented is the admissibility of recorded telephone conversations between Telish and his former girlfriend, L.D., which evidence was received at the administrative hearing in this matter.

A participant may properly record a telephone conversation at the direction of a law enforcement officer, acting within the course of his or her authority, in the course of a criminal investigation. (Pen. Code, § 633.)<sup>2</sup> Further, section 633 does not limit the use of duly recorded communications to criminal proceedings.

Although Telish contends the criminal investigation was a “sham,” the Board determined L.D. duly recorded the telephone conversations pursuant to the direction of DOJ in connection with a criminal investigation, and the Board’s finding is supported by substantial evidence. Therefore, the recorded telephone conversations were admissible at the administrative hearing. We also reject Telish’s other arguments and affirm the judgment.

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<sup>1</sup> The judgment denying the petition for writ of mandate is appealable. (Code Civ. Proc., §§ 904.1, subd. (a)(1), 1110; *Catalina Investments, Inc. v. Jones* (2002) 98 Cal.App.4th 1, 5, fn. 3; *International Film Investors v. Arbitration Tribunal of Directors Guild* (1984) 152 Cal.App.3d 699, 703.)

<sup>2</sup> All further statutory references are to the Penal Code, unless otherwise specified.

### FACTUAL AND PROCEDURAL BACKGROUND<sup>3</sup>

In June of 2006, while working as Senior Special Agent in Charge at the Bureau of Narcotics Enforcement's (BNE) LA Interagency Metropolitan Police Apprehension Crime Task Force (LA IMPACT), Telish began a consensual sexual relationship with a subordinate employee, L.D., who worked as an administrative assistant and financial analyst. Their relationship continued on and off until the end of 2009. L.D. was one of approximately 100 employees supervised by Telish. He supervised L.D. from 2005 until 2008. On March 20, 2008, L.D. left LA IMPACT and accepted a position with the Placentia Police Department.

In October of 2007, rumors of Telish's relationship with L.D. surfaced at work. Jerry Hunter (Hunter), Assistant Chief at BNE, inquired about the rumors. Telish denied the relationship and admitted only to having gone to dinner with L.D. By the end of the conversation, Hunter believed Telish's account of his platonic work relationship with L.D. Telish then confronted L.D. about the rumors, upon which she explained that she had revealed their relationship to several co-workers. Telish was upset and instructed L.D. to deny their relationship and tell the co-workers that she had exaggerated it. Telish also directed L.D. to tell Douglas Law, Deputy Director of LA IMPACT, that she had made up or embellished their relationship. Telish had taken over 100 sexually explicit photographs of L.D. and he threatened to post them online or email them to her son if she did not recant her statements about being in a relationship with him.

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<sup>3</sup> The Board acts as an adjudicatory body, weighing the evidence to determine the facts (*Pollak v. State Personnel Bd.* (2001) 88 Cal.App.4th 1394, 1403-1404), and as an agency of constitutional authority, the Board's decisions "are reviewed only to determine whether substantial evidence supports the determination, even when vested rights are involved. [Citations.]" (*Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102, 1125.) Any factual finding by the Board "which is not specifically attacked is to be accepted as true." (*Black v. State Personnel Board* (1955) 136 Cal.App.2d 904, 909.) The bulk of the findings here are not attacked. Accordingly, this summary is based in large part on the SPB's decision, adopted on June 21, 2012, and included in the record on appeal, as part of the administrative record. (*State Trial Attorneys' Assn. v. State of California* (1976) 63 Cal.App.3d 298, 302, fn. 4.)

On October 27, 2009, while at L.D.'s home, Telish inquired about a risque text he saw on L.D.'s cell phone. He kept looking through the phone after being asked to stop and he accused L.D. of sleeping with other men. A struggle for the phone ensued. Telish held L.D.'s arm down to keep her from reaching the phone.

On December 9, 2009, L.D. reported to her current boss, Placentia Chief of Police James Anderson (Chief Anderson), that she had been assaulted by Telish and that in 2007 he threatened to release nude photographs of her if she failed to recant statements she had made about their affair. Believing that Telish had committed assault and battery as well as extortion, Chief Anderson reported L.D.'s allegations to DOJ Deputy Director Rick Lopes and to the Orange County District Attorney.

In January 2010, DOJ began a criminal investigation regarding L.D.'s allegations against Telish. As part of the investigation, at the direction of DOJ, L.D. surreptitiously recorded multiple telephone conversations she had with Telish. After being provided with a report from DOJ, the Orange County District Attorney's office declined to prosecute.

DOJ dismissed Telish from his position as a Senior Special Agent in Charge, effective July 19, 2010, alleging he intimidated, threatened to release sexually explicit photographs of, and physically assaulted a subordinate employee with whom he had a consensual relationship. DOJ also alleged Telish misused his State-issued vehicle, made derogatory racial comments about a supervisor, discussed the physical attributes of candidates for a position on a task force, falsely claimed to have an informant who provided him with confidential information, was dishonest during an investigatory interview, and destroyed evidence.

1. *Administrative proceedings.*

a. *The proposed decision of the administrative law judge (ALJ) denying Telish's motion to exclude evidence of the recordings and sustaining his dismissal.*

Telish appealed his dismissal to the SPB. The hearing was conducted on February 28, and March 1 - 4, 2011. At the commencement of the hearing, Telish moved to exclude evidence of the surreptitious recordings between him and L.D. contending that,

among other legal theories, the recordings were made in violation of section 632. He argued the recordings were made without his consent, were not recorded as part of a pending criminal investigation with probable cause, were not recorded with the supervision of a law enforcement agency, and were inadmissible during an administrative hearing.

On March 17, 2011, the ALJ issued an order, separate from her proposed decision, denying Telish's motion to exclude evidence of the recordings. The ALJ ruled that because the recordings were performed at the direction of the DOJ and related to a criminal investigation of serious crimes, they were admissible pursuant to section 633.

With respect to the merits, the ALJ found Telish's behavior constituted cause for discipline under various subdivisions of Government Code section 19572 and that the appropriate penalty was dismissal.

b. *The Board's decision, ruling the recordings were inadmissible but the remaining evidence was sufficient to uphold the dismissal.*

The Board rejected the ALJ's proposed decision and decided to hear the case itself. The parties appeared and presented oral arguments to the Board on December 13, 2011.

The Board adopted all of the ALJ's findings of fact. However, it reversed the ALJ's evidentiary ruling and held the evidence obtained from the surreptitious recordings was inadmissible. Citing *Rattray v. City of National City* (9th Cir. 1994) 51 F.3d 793 (*Rattray*), discussed *infra*, the Board held that although the recordings properly were made by L.D. acting pursuant to the direction of law enforcement in connection with a criminal investigation (§ 633), the recordings could only be utilized in a criminal proceeding, and therefore should have been excluded by the ALJ at the administrative hearing.

The Board concluded that although the recordings should have been excluded, their admission by the ALJ was harmless error and therefore Telish's dismissal remained intact. "Independent of the recordings, sufficient evidence exists in support of each cause of action for discipline found by the ALJ. . . . Notwithstanding the recordings, each

factual basis in support of each sustained charge is corroborated by live testimony and/or other evidence admitted at [the] hearing.”

*2. Superior court proceedings.*

Telish filed a petition for writ of administrative mandate (Code Civ. Proc., § 1094.5), seeking to set aside the Board’s decision upholding his dismissal. Telish contended the recorded phone conversations were inadmissible, and absent the recordings and their progeny, there was insufficient evidence to sustain the dismissal.

DOJ filed a cross-petition for writ of administrative mandate. DOJ’s petition sought to overturn the Board’s decision insofar as it excluded evidence of the recordings. DOJ requested that in all other respects the Board’s decision be upheld.

After considering the papers and hearing argument, the trial court concluded the Board erroneously excluded the recorded phone calls because they were duly recorded by L.D., at the direction of the DOJ, as part of a criminal investigation. (§ 633.) Further, “[t]here is nothing in section 633 which limits use of the telephone call recorded pursuant to the law enforcement exception in a criminal case. Rather, if the conversation is recorded in the course of a criminal investigation, the exception applies and the recording is admissible in any proceeding -- criminal, civil, or administrative.” The trial court further ruled that even assuming the recordings were inadmissible, there was sufficient remaining evidence to uphold the dismissal and that the penalty of dismissal was not an abuse of discretion.

The trial court entered judgment denying Telish’s petition and granting DOJ’s cross-petition. It directed the Board to set aside the portion of its decision that held the recorded phone conversations were inadmissible.

Telish appealed.

## **CONTENTIONS**

We summarize Telish’s contentions as follows: (1) the recordings and their progeny were inadmissible because they were obtained in a sham criminal investigation for use in administrative proceedings against him; (2) the DOJ violated his rights under the Public Safety Officers Procedural Bill of Rights Act (POBRA) (Gov. Code, § 3300 et

seq.); (3) the recordings were inadmissible in any proceeding because they were confidential communications obtained in violation of section 632; (4) L.D.'s credibility as a victim should be reevaluated; (5) if the recordings and their progeny are disregarded, the adverse decision cannot be upheld.<sup>4</sup>

## DISCUSSION

### 1. *Standards applicable to judicial review of an SPB decision.*

Trial court review of an administrative decision is governed by Code of Civil Procedure section 1094.5. Subdivision (b) thereof limits the court's inquiry "to the questions whether the [administrative tribunal] has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." In determining whether there was an abuse of discretion, the reviewing court considers whether the administrative tribunal proceeded in the manner required by law, whether its order or decision is supported by the findings, and whether the findings are supported by the evidence. (*Ibid.*)

Because the SPB is vested with quasi-judicial powers, the trial court may not exercise its independent judgment, but must uphold the Board's findings if they are supported by substantial evidence. In applying the substantial evidence test, the trial court must examine all relevant evidence in the entire record, considering both the evidence that supports the Board's decision and the evidence against it, in order to determine whether that decision is supported by substantial evidence. (*Coleman v. Department of Personnel Administration, supra*, 52 Cal.3d at p. 1125; *Furtado v. State Personnel Bd.* (2013) 212 Cal.App.4th 729, 742 (*Furtado*). This does not mean,

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<sup>4</sup> Telish's reply brief on appeal belatedly raises various new arguments. In the reply brief, Telish contends, inter alia, the recordings of his private conversations denied him equal protection, and that the penalty of dismissal was an abuse of discretion. An appellant's failure to raise an argument in the opening brief waives the issue on appeal. (*Tisher v. California Horse Racing Bd.* (1991) 231 Cal.App.3d 349, 361; *Dieckmeyer v. Redevelopment Agency of Huntington Beach* (2005) 127 Cal.App.4th 248, 260.) Therefore, points which Telish raises for the first time in his reply brief have been waived.

however, that a court is to reweigh the evidence; rather, all presumptions are indulged and conflicts resolved in favor of the Board's decision. (*Furtado*, at p. 742.)

These standards “do not change on appellate review from a trial court's denial of a petition for writ of mandate from a decision of the SPB; an appellate court independently determines whether substantial evidence supports *the SPB's findings*, not the trial court's conclusions.” (*Furtado, supra*, 212 Cal.App.4th at p. 742.) However, insofar as an appeal from an administrative mandamus proceeding presents questions of law, our review is de novo. (*Ibid.*)

2. *Trial court properly held the recorded phone calls were admissible because L.D. recorded them at the direction of law enforcement.*

a. *Statutory scheme.*

The Invasion of Privacy Act (§ 630 et seq.) prohibits one party to a conversation from recording it without the other's consent. (*Ribas v. Clark* (1985) 38 Cal.3d 355, 360.) While one “who imparts private information risks the betrayal of his confidence by the other party, a substantial distinction has been recognized between the secondhand repetition of the contents of a conversation and its simultaneous dissemination to an unannounced second auditor, whether that auditor be a person or mechanical device. [Citation.]” (*Id.* at pp. 360-361.)

Section 632 states in relevant part: “(a) Every person who, intentionally and *without the consent of all parties* to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or *records the confidential communication*, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.” (Italics added.)

The term “confidential communication” is defined as including “any communication carried on in circumstances as may reasonably indicate that any party to

the communication desires it to be confined to the parties thereto . . . .” (§ 632, subd. (c).)

Subdivision (d) of section 632 provides for the exclusion of evidence obtained in violation of the statute. It states: “Except as proof in an action or prosecution for violation of this section, *no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section* shall be admissible in any judicial, administrative, legislative, or other proceeding.” (Italics added.)

Section 633, which is the key provision for our purposes, creates an exception for recorded communications by an individual acting at the direction of law enforcement. “Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, police officer of the County of Los Angeles, *or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority*, from overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter.” (§ 633, italics added.)<sup>5 6</sup>

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<sup>5</sup> Said chapter, the Invasion of Privacy Act, was added by Statutes 1967, chapter 1509, section 1. Under prior law, recording of telephone conversations was “not illegal if consent of *one party* to the communication [was] obtained.” (Sen. Com. on Judiciary, analysis of Assem. Bill No. No. 860 (1967-1968 Reg. Sess.) as amended June 5, 1967, p. 1, italics added.)

<sup>6</sup> Similarly, the federal Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2510 et seq., provides in relevant part at section 2511(2)(c): “It shall not be unlawful under this chapter *for a person acting under color of law* to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.” (Italics added.) In “assessing whether someone acted under ‘color of law’ for the wiretap statute, the question is whether the witness was acting under the government’s direction when making the recording.” (*U.S. v. Andreas* (7th Cir. 2000) 216 F.3d 645, 660.)



b. *Duly recorded phone calls are admissible in administrative proceedings.*

As set forth above, notwithstanding section 632, an individual acting at the direction of a law enforcement officer may record a confidential communication. (§ 633.) That is what occurred here. As the Board found, L.D. surreptitiously recorded multiple telephone conversations between herself and Telish, under the direction of Special Agent Stauts (Stauts), who was conducting a criminal investigation of Telish on behalf of the DOJ.

The Board found the exception of section 633 “allowed [L.D.] to record her telephone conversations with [Telish] at the direction of the DOJ.”

Although the Board found L.D. made the recordings at the direction of law enforcement, it ruled the recordings could not be admitted into evidence at the administrative hearing before the ALJ. Its rationale was that “section 633 is intended *solely* to permit law enforcement officers to continue to use electronic devices in criminal investigations, necessary in the performance of their duties in detecting crimes and apprehending criminals. . . . [I]n this case, even though the recording was performed pursuant to the direction of the DOJ in connection with a criminal investigation, the use of the recording was to discipline a DOJ employee in an administrative hearing, betraying the very purpose of the legislation, which is to detect crimes and apprehend criminals. Simply because DOJ obtained the recordings as part of a criminal investigation, does not mean that it has free rein to use the recordings at its own volition.”

We, like the trial court, conclude the Board misread the statute. Section 632, subdivision (d) precludes the admission of evidence obtained “*in violation of this section,*” i.e., section 632, “in any judicial, administrative, legislative, or other proceeding.” (§ 632, subd. (d), italics added.) Thus, the subdivision only excludes evidence which was obtained in violation of section 632. Evidence which was obtained without violating section 632 is not made inadmissible by subdivision (d) thereof. Further, nothing in section 632, subdivision (d) limits the use of duly recorded communications to criminal proceedings or precludes their use in administrative

proceedings. If evidence is obtained without running afoul of section 632, nothing in subdivision (d) limits the manner in which such evidence may be used.<sup>7 8</sup>

The maxim *expressio unius est exclusio alterius*, which means “ ‘the expression of certain things in a statute necessarily involves exclusion of other things not expressed’ ” (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13), is applicable here. The exclusionary rule set forth in subdivision (d) of section 632 provides for the exclusion only of evidence obtained “*in violation of this section . . . in any judicial, administrative, legislative, or other proceeding.*” (*Ibid.*, italics added.) Thus, the exclusionary rule is not as broad as Telish would like. It does not restrict the use of evidence which was properly obtained in accordance with section 633. The Legislature certainly could have specified that evidence lawfully obtained pursuant to section 633, at the direction of law enforcement, may only be used in a criminal proceeding. It did not do so. This court cannot, under the guise of interpretation (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342,

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<sup>7</sup> Federal law is in accord. In *Resha v. U.S.* (6th Cir. 1985) 767 F.2d 285 (cert. den.), the issue presented was whether evidence derived from a lawful wiretap during an investigation of criminal activities and later disclosed to revenue agents who used it for the purpose of making civil tax assessments was subject to suppression in an action to recover taxes paid pursuant to such assessments. *Resha* “construe[d] [18 U.S.C.] § 2515 to permit suppression of evidence only if that evidence was derived from unlawful, improper or unauthorized interceptions of wire or oral communications.” (767 F.2d at p. 288, italics omitted.) *Resha* concluded “the legislative history and authoritative construction of the statute lead to the conclusion that the extreme remedy of suppression is authorized only when the interception itself was unlawful for one or more of the reasons set forth in [18 U.S.C.] § 2518(10)(a).” (767 F.2d at p. 289.)

<sup>8</sup> The trial court reached the identical conclusion. It reasoned: “There is nothing in section 633 which limits use of the telephone call recorded pursuant to the law enforcement exception in a criminal case. Rather, if the conversation is recorded in the course of a criminal investigation, the exception applies and the recording is admissible in any proceeding -- criminal, civil, or administrative. Indeed, section [632(d)] only excludes evidence obtained in violation of section [632]; evidence obtained pursuant to section 633’s law enforcement exception is not evidence obtained in violation of section [632’s] proscription.”

349), expand the exclusionary rule of section 632, subdivision (d), or insert a limitation in section 633, by adding terms which the Legislature chose not to include. “[W]e must limit ourselves to interpreting the law as written and leave for the People and the Legislature the task of revising it as they deem wise.” (*People v. Garcia* (1999) 21 Cal.4th 1, 15.) “A court may not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed. [Citations.]” (*Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 73-74.)

c. *Telish’s authorities are inapposite.*

Telish’s, and the Board’s, reliance on *Rattray*, *supra*, 51 F.3d 793 to disallow the recordings is misplaced. There, Officer Rattray was accused of sexually harassing a female coworker, Figueroa. In the course of investigating this complaint, the police captain directed “that Figueroa attempt to engage Rattray in a flirtatious conversation, and that she secretly record the incident. Figueroa subsequently taped a conversation between herself and Rattray.” (*Id.* at pp. 795-796.) Rattray sued, alleging inter alia, a claim of invasion of privacy based on the secret recording of his conversation with Figueroa. (*Id.* at p. 796.)

The district court relied upon the section 633 exception to dismiss plaintiff’s claim, “ruling that because police captains could secretly record the private conversations of their employees by ‘wiring’ one party to the conversation prior to the enactment of § 633, the actions of Rattray’s supervisors did not run afoul of § 632 in this case.” (*Rattray*, *supra*, 51 F.3d at p. 797, fn. omitted.) The Ninth Circuit reversed, stating “[t]he legislative history of § 633 and the dictates of the California Constitution, however, compel a conclusion that § 633 protects only electronic recording and eavesdropping in the course of criminal investigations, and not police recordings of their own employees as a matter of internal discipline.” (*Rattray*, *supra*, at p. 797, italics added.)

Thus, in *Rattray*, the section 633 exception did not apply because the recording was not obtained in the course of a criminal investigation. Rather, there was merely an internal investigation into Figueroa’s accusation that co-worker Rattray had sexually harassed her.

Here, unlike *Rattray*, the recordings occurred in the context of a criminal investigation, so as to bring this fact situation within the section 633 exception for a recording made at the direction of law enforcement. *Rattray* stands for the proposition that section 633 only protects recordings which were made in the course of a criminal investigation. As the trial court observed herein, “*Rattray* has nothing to do with the use of a recorded telephone call, *properly recorded in a criminal investigation*, in a civil or administrative case.” (Emphasis added.)

Telish also relies heavily on *Dyson v. State Personnel Bd.* (1989) 213 Cal.App.3d 711 (*Dyson*). There, the Department of Youth Authority conducted a search of a youth counselor’s home for evidence that the counselor had committed the crime of theft. (*Id.* at p. 714.) A criminal prosecution was dismissed on the ground the search violated the employee’s constitutional right to privacy. (*Ibid.*) However, over the employee’s objection, the unconstitutionally seized evidence was admitted in a subsequent administrative disciplinary proceeding which resulted in the employee’s dismissal. (*Id.* at pp. 714-715.) The issue presented on appeal was whether said evidence should have been excluded from the administrative proceedings. *Dyson* concluded the Board was collaterally estopped to deny the constitutional invalidity of the search, as determined in the criminal proceeding, and the unconstitutionally seized evidence should have been excluded in the administrative proceeding. (*Id.* at p. 715.)

*Dyson* does not assist Telish. Unlike *Dyson*, where the evidence was seized unlawfully, L.D. duly recorded her conversations with Telish pursuant to the direction of law enforcement, in connection with an active criminal investigation. (§ 633.) Therefore, *Dyson*’s exclusionary rule has no application here. (See *California Science Center v. State Personnel Bd.* (2013) 218 Cal.App.4th 1302, 1308-1309 [distinguishing *Dyson*; exclusionary rule did not apply because evidence leading to employee’s termination was not obtained via an unconstitutional search or seizure].)

Likewise, *In re M.B.* (State Personnel Bd. 1996) SPB Precedential Decision No. 96-08, cited by Telish, is inapposite. There, evidence was excluded in an administrative proceeding because it was obtained in violation of the federal wiretapping

law. (18 U.S.C. §§ 2510-2521). Here, the recordings were obtained lawfully (§ 633) and therefore were admissible in the administrative proceeding.

d. *No merit to Telish's contention the criminal investigation was a sham; the Board properly determined L.D. duly recorded the conversations at the direction of law enforcement.*

In an attempt to avoid section 633's allowance of recordings at the direction of law enforcement, Telish contends the criminal investigation was a "sham" to enable DOJ to invoke section 633, which authorizes recording of conversations at the direction of law enforcement.

Whether a criminal investigation is a sham is a factual issue. (*Van Winkle v. County of Ventura* (2007) 158 Cal.App.4th 492, 498 (*Van Winkle*) [former deputy sheriff contended sheriff's departments often initiate criminal investigations as shams to conduct disciplinary investigations without affording POBRA protections].) Here, the Board found L.D. duly recorded the telephone conversations in accordance with section 633 "pursuant to the direction of the DOJ in connection with a criminal investigation." That finding, which is supported by substantial evidence, must be upheld. The evidence showed:

In 2009, L.D. was working for the City of Placentia as the administrative assistant to its police chief, Chief Anderson. In late 2009, L.D. told Chief Anderson that (1) Telish had assaulted her in her home by holding her down on a couch while he examined her cell phone history, and (2) Telish had threatened to show L.D.'s son nude photographs of her if she failed to recant statements she had made about their affair.

Based on L.D.'s report, Chief Anderson felt that Telish had potentially committed crimes of domestic violence and extortion. Chief Anderson was extremely upset and felt that Telish should not be in law enforcement. Chief Anderson reported L.D.'s statements to Director George Anderson and Deputy Director Rick Lopes of DOJ's Division of Law Enforcement which oversees the Bureau of Narcotics Enforcement, which is where Telish worked.

DOJ commenced a preliminary investigation by having L.D. interviewed by two investigators from its Professional Standards Group. L.D. told them that she was involved in a sexual relationship with Telish, he had physically assaulted her, and he had threatened to release nude photographs of her if she did not cooperate in concealing their affair. The interviewers found L.D. spoke candidly and was credible.

Based on the report from the interviewers, Director Anderson opined "it appeared that we had criminal violations in the area with domestic violence, dissuading a witness, perhaps perjury. . . . [¶] So at that point on, we had to investigate it criminally."

The criminal investigation was *first* in time, and was separate from the administrative investigation, which was conducted by DOJ's employment law office, outside the Division of Law Enforcement.

Director Anderson met with a criminal supervising deputy attorney general, Canzoneri, to obtain an independent evaluation of possible criminal charges and to discuss how to proceed. It was determined the potential charges against Telish consisted of witness intimidation and false imprisonment.

Director Anderson decided "we needed to go ahead and make surreptitious telephone recording conversations so we could establish whether in fact there was criminal culpability." Director Anderson gave the approval to proceed with the telephone recordings.

The criminal investigation was conducted by Special Agent Stauts. He advised L.D. that it was legal for her to surreptitiously record the conversations as an agent of a peace officer. Stauts instructed L.D. to record her telephone conversations with Telish, and to discuss that he had held her down on the couch and had threatened to expose her nude photographs if she did not cooperate in concealing their relationship. L.D. expressed concern that this discussion would cause Telish to know that she was recording the conversations, but Stauts assured her that based on his experience, Telish would not react that way. After each telephone call, L.D. contacted Stauts and gave him a synopsis. Stauts then would meet with L.D., obtain the recorder, and download the recording to his computer. L.D. recorded eight telephone conversations with Telish.

In the final taped conversation on February 23, 2010, Telish acknowledged he had held L.D. down on the couch while he looked through her phone. That was sufficient because Canzoneri had advised Stauts that false imprisonment was the stronger of the two charges. Stauts then prepared a report on the criminal investigation and submitted it to the Orange County District Attorney's office, which declined to prosecute.

In sum, substantial evidence supports the Board's conclusion that section 633 applied insofar as "[L.D.] . . . record[ed] her telephone conversations with [Telish] at the direction of the DOJ." The evidence showed the DOJ criminal investigation was prompted by a report from Chief Anderson, at an outside law enforcement agency, that Telish had engaged in domestic violence against L.D. and had threatened her if she refused to recant the affair. It was Chief Anderson who contacted DOJ because he believed Telish "had committed a crime against her." Stauts directed L.D. to record the conversations because he "didn't think there was any other way we were going to prove or disprove her allegations." The record supports the Board's determination that L.D. duly recorded the conversations, at DOJ's direction, in its criminal investigation of Telish. Accordingly, we reject Telish's contention the criminal investigation was a sham to circumvent section 633.

3. *Telish's POBRA arguments.*

a. *The protections of POBRA do not apply to an officer subject to an independent criminal investigation conducted by his or her employer.*

POBRA (Gov. Code, § 3300 et seq.) provides procedural rights for a law enforcement officer who is the subject of an administrative investigation. Government Code section 3303 specifies the protections that apply when a peace officer is interrogated in the course of an administrative investigation that might subject the officer to punitive action, such as " 'dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.' " (*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 574.) Telish contends POBRA's protections were applicable because he was under an "administrative investigation" while he engaged in private telephone conversations with L.D. The argument fails.

Government Code section 3303, subdivision (i), states in relevant part, “This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, *nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.*” (Italics added.) Thus, the protections of POBRA do not apply to an officer who is subject to an independent criminal investigation conducted by the employer (*Van Winkle, supra*, 158 Cal.App.4th at pp. 494, 498), which is what occurred here.<sup>9</sup>

b. *Statute of limitations.*

Telish also contends this matter is time-barred because, pursuant to POBRA, the DOJ had one year from the time of an earlier investigative report, dated March 28, 2008, to proceed against him.<sup>10</sup>

“The date upon which an administrative agency discovers misconduct is a question of fact, as is the reasonable diligence with which the person authorized to initiate an investigation into misconduct acted.” (*Haney v. City of Los Angeles* (2003) 109 Cal.App.4th 1, 8.)

On June 29, 2010, Telish was served with a Notice of Adverse Action (NOAA) of Dismissal. The NOAA alleged that in 2007 it was reported to management that he and

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<sup>9</sup> Telish relies on language in *California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294 “that the criminal investigations referred to in subdivision (i) of section 3303 . . . must be ones conducted primarily by outside agencies without significant active involvement or assistance by the employer.” (82 Cal.App.4th at pp. 308-309.) However, *Van Winkle* noted “there is no language in [POBRA] which supports this interpretation.” (*Van Winkle, supra*, 158 Cal.App.4th at p. 499; accord *Department of Corrections & Rehabilitation v. State Personnel Bd.* (2013) 215 Cal.App.4th 1101, 1109.)

<sup>10</sup> Government Code section 3304 states in relevant part at subdivision (d), “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation *is not completed within one year of the public agency’s discovery* by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct.”



L.D. were having an affair, and that he coerced L.D. to recant her statement that they were having an affair. “However, *it was not until December 2009* that DOJ learned that the reason [L.D.] recanted the story of the affair . . . in 2007 was that you threatened to release the nude pictures that you had of her to her son and others, if she did not do so. In other words, you coerced her to lie.” (Italics added.)

In ruling the action was timely, the Board determined, “There is no evidence that anyone meeting the definition of a ‘person authorized to initiate an investigation’ [(Gov. Code, § 3304, subd. (d)(1))] had knowledge of [Telish] allegedly threatening to release the photographs *until L.D. reported the threat in December 2009*. Accordingly, the charge is not barred by the [statute of limitations].” (Italics added.)

We perceive no error. We are mindful it was not until late 2009 that L.D. disclosed Telish’s threats to Chief Anderson. Therefore, substantial evidence supports the Board’s determination that the DOJ did not discover this misconduct until December 2009. We conclude Telish’s contention the DOJ should have discovered the threats in 2007 or 2008 is meritless.

4. *Telish’s contentions with respect to the merits of the Board’s decision.*

a. *No merit to Telish’s contention that L.D.’s credibility should be reevaluated and that her testimony should be given no weight.*

Telish contends L.D.’s credibility should be reevaluated and that her testimony should be given no weight. We summarily reject Telish’s argument that the Board should have disbelieved L.D.’s testimony. “[C]redibility of witnesses and the proper weight to be given to their testimony were matters within the exclusive province of the [B]oard.” (*Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183, 189; accord *Wilson v. State Personnel Bd.* (1976) 58 Cal.App.3d 865, 877; *Flowers v. State Personnel Bd.* (1985) 174 Cal.App.3d 753, 759; *Larson v. State Personnel Bd.* (1994) 28 Cal.App.4th 265, 273.)

b. *No challenge to sufficiency of the evidence to support Board's decision.*

Apart from attacking L.D.'s credibility and contending the criminal investigation was a sham, Telish does not challenge the sufficiency of the evidence to support the Board's adverse decision on the various charges against him.

Further, Telish's opening brief, which sets forth the evidence in the light most favorable to him, cannot be construed as presenting such a contention. " 'When an appellant challenges an administrative decision as unsupported by substantial evidence in light of the record as a whole, it is [the] appellant's burden to demonstrate that the administrative record does not contain sufficient evidence to support the agency's decision.' [Citation.] A recitation of only the part of the evidence that supports the appellant's position 'is not the "demonstration" contemplated under the above rule. [Citation.] Accordingly, if [appellants] contend "some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived.' ' [Citations.]" (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 749.)<sup>11</sup>

c. *Unnecessary to address whether the Board's decision can be sustained if the recordings and their progeny were disregarded.*

Finally, Telish contends that absent the recordings and their progeny, the Board's adverse decision cannot be upheld. In view of our conclusion that L.D. duly made the recordings at the direction of law enforcement in the course of a criminal investigation (§ 633), it is unnecessary to discuss whether the Board's decision would be sustainable if the challenged evidence were excluded.

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<sup>11</sup> We note the trial court similarly found, "Telish's moving papers contain only snippets of the relevant facts. For each charge, the papers cite only to testimony and evidence which Telish contends supports his position without any reference to the other facts and evidence. [¶] . . . [¶] Telish's opening brief is procedurally defective because he did not present all of the pertinent evidence on any issue; the court cannot evaluate from the facts he presents whether substantial evidence exists to support the SPB's decision. Telish's petition is denied for this reason alone."

**DISPOSITION**

The judgment is affirmed. The Board shall recover its costs on appeal.

**CERTIFIED FOR PUBLICATION**

EDMON, P. J.

We concur:

KITCHING, J.

ALDRICH, J.